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ABSTRACT

This study of the feasibility of conducting a cost-benefit analysis in the complex environment of the formalities used in the United States as part of its administration of the copyright law focused on the formalities of copyright notice, deposit, registration, and recordation. The U.S. system is also compared with the less centralized copyright systems of three members of the Berne convention: England, France, and Sweden. Data were obtained through interviews conducted via telephone calls and letters with key individuals from the U.S. copyright community, the U.S. Copyright Office, and non-U.S. intellectual property sources; a survey of 233 copyright attorneys and senior executives in the U.S. motion picture and textile industries; and a cost-benefit analysis of activities associated with copyright formalities in the U.S. Copyright Office. Four principal advantages of copyright formalities were identified: (1) they provide the potential for avoiding copyright infringement; (2) they enhance initiating and expediting infringement proceedings; (3) they provide prima facie evidence of the validity of the copyright; and (4) they provide a mechanism for collecting statutory damages. Opinions of respondents also showed that they overwhelmingly felt the U.S. system to be superior to non-U.S. copyright systems in several important respects. Hypothetical possibilities of maintaining the U.S. system but operating it differently so that it would help satisfy the requirements for Berne admittance were also explored. Three appendixes provide copies of the survey questionnaire; a list of individuals interviewed in England, France, and Sweden; and examples of questions asked about European intellectual property systems. (CGD)

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and/or contacting representatives inside and outside the U.S., which were used as the basis for survey data collection and on-site visits. She also assisted with analyzing the formality-like systems of European countries and described a hypothetical Berne-compatible system for the U.S. Consultants Sydney Gluck and Ivan Bender provided us with guidance pertaining to the textile and motion pictures industries, respectively, and Consultant Phillip Robinson provided input for developing the conceptual framework and collecting the foreign data.

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Donald W. King
President
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EXECUTIVE SUMMARY

Objectives of the Study

The U.S. is one of the few developed nations in the world which requires the use of "formalities" as part of its administration of the copyright law. Other nations, particularly those which are members of the Berne convention, do not have such requirements and operate their copyright systems without the degree of centralization which exists in the U.S. Over the years, questions have arisen as to the value of the U.S. system of formalities. A partial answer to this question can be determined by observing the purposes and extent to which the formalities are used and the costs and benefits of such formalities.

This document is a report of an investigation of the costs and benefits of the United States' system of copyright formalities. The copyright formalities of interest here are copyright notice, deposit, registration and recordation. Notice refers to the requirement that a published work contain a copyright notice. Deposit is the requirement that one or more copies of the work be deposited with the Library Congress. Registration itself is the procedure in which the basic facts of ownership (copyright) are placed on public record. Finally, recordation is the process whereby a public record is maintained by the Copyright Office of transfers or changes in ownership rights.

The primary objective of the study was to determine the feasibility of doing cost and benefit analysis in such a complex environment. In order to do this it was necessary to develop a conceptual framework for addressing the volume, costs and benefits of activities related to these four formalities. Included in this objective was the need to identify the relationships among system costs and benefits, and insofar as possible, to identify those variables affecting costs or benefits. Thus, at the conclusion of the study there would be a basis for comparing all the formalities' costs based on transaction quantities or volume, and their effectiveness in terms of the consequences of them.

A second objective of the study was to compare the the U.S. system of formalities with those of formality-like systems in England, Sweden, and France. These countries were selected because they possess both substantial similarities and differences in relation to U.S. industries and copyright law. Related to this objective, the Copyright Office was also interested in understanding how the functions performed by U.S. copyright formalities are performed in other copyright sytems. In basic terms, we view copyright formalities as supporting an information system which facilitates the recording, storage, retrieval, and use of the "facts of ownership." Thus, in looking at "formality-free" systems, we were interested in investigating those resources or processes, possibly unrelated to copyright, which might facilitate the same or similar functions as served by U.S. formalities.

Formality-like Systems in England, Sweden and France

In studying the European legal systems, we learned that they differ in significant ways from the U.S. Copyright systems. For example, there is a substantial difference between the amount and types of information required by the film registration systems of France, Great Britain, and the United States. The U.S. copyright system collects relatively small amounts of basic ownership information concerning the productivity of a motion picture. In Great Britain, less information is collected concerning ownership, but it collects considerable amounts of information about production costs and the film's creators. The French system, on the other hand, collects even greater amounts of details concerning the financing, production, ownership, and exhibition of French films. Because of these and other very significant differences among these systems, we did not feel that it would be appropriate to compare the costs or even the operational efficiencies of the different countries' registration systems. The difficulty of comparison stems not only from the obviously different functions of the three registration systems — this would be like comparing apples to oranges — but also from the fact that the American system is part of an overall management structure (i.e., the U.S. Copyright Office) which registers and maintains records for many different forms of artistic and intellectual property.

The results of our investigation into European copyright and design protection systems were presented in a separate report entitled "A Discussion of the Relevance of European Copyright and Design Protection Systems to Copyright Formalities in the United States," April 1984. Also, portions of the report are highlighted in Section 4 of this report.

The bottom line of our investigation of European intellectual property systems is that although their copyright laws are largely "formality-free," businesses doing copyright business use systems of registration and recordation somewhat similar to those found in the U.S. Even though the European systems of formalities we identified were separate from the copyright laws in their host countries (and in some cases outside the government) they all performed functions similar to those of the U.S. copyright system of formalities.

Cost and Benefits of Formalities in the Motion Picture and Textile Industries

The Copyright Office selected two industries to serve as the focus of this pilot project: the motion picture and fabric design industries. Although, these two industries are very different, they are both users of copyright. However, they differ substantially in their use of copyright. The former is a very heavy user of copyright, in terms of the acquisition of works to convert into motion pictures, the registration of films and videotapes, and in the licensing and sale of distribution and other subsidiary rights. We learned from interviews and the industry surveys that because of the large number of dollars involved, legal personnel associated with the motion picture industry can afford to leave no stone unturned in protecting and promoting the interest of their employers or clients.

The likelihood that a particular work will be registered in the textile industry, on the other hand, is not nearly as high. Many firms and individuals in the industry are either unaware of how copyright law can be used to protect their designs, or, even though they may be aware of the ease with which textile and fabric patterns are "created" or copied, they may be reluctant to register works which would have a short market life anyway. This was found to be particularly true in Great Britain, as well.

Summary of Results

Below a summary of results are given for the study of costs and benefits of U.S. Copyright formalities. These results reflect in-depth interviews with key individuals and industry spokesmen from the U.S. and England, France and Sweden. The results also reflect findings from a statistical survey of 233 lawyers and senior executives who are concerned with copyright in the motion picture and textile industries. Finally, an in-depth analysis was performed on appropriate activities and their costs associated with registration, deposit, recordation and related processing at the U.S. Copyright Office.

The copyright community dealing with motion pictures and fabric designs is estimated to consist of about:

- 299 law firms or individual lawyers in private practice;
- 157 for-profit organizations associated with production and/or distribution of feature-length motion pictures;
- 100 for-profit organizations associated with the manufacture, distribution, or sale of textile piece goods, apparel fabrics, clothing or other textile-related products; and
- 155 for-profit and non-profit organizations such as trade associations, research institutes, etc.

Altogether, it is estimated that there are about 2,180 attorneys who have recently been involved in copyright-related matters; 1,450 of them in law firms, 230 in motion picture companies, 50 in textile companies, and 450 in other types of organizations.

From the survey of copyright and industry executives, it is estimated that there were a total of 6,330 registrations of motion picture works and 9,490 fabric design works in the year prior to winter 1984/85. The cost to the U.S. Copyright Office for processing these works (receiving and processing claims, examining works, and producing registration and filing deposit claims, and responding to requests) is estimated to be about $450,000 (i.e., $180,000 for motion picture works and $270,000 for fabric designs). Revenue at $10 per registration and deposit is estimated to be about $160,000. Cost to the Copyright Office for recording an estimated 2,980 transfers of motion picture works and 320 fabric design works is about $55,000.

Compared to the cost to the industries, the cost to the Copyright Office seems minimal. In fact, the cost of registration, deposit and recordation to the Copyright Office is only three percent of the cost of copyright related activities incurred by the motion picture and textile industries. It costs the motion picture industry about $11.1 million to register and deposit motion picture works. The corresponding figure for the textile industry is $2.2 million. It costs much more to register a motion picture work than a fabric design work (about $1,750 compared to $230). Part of the discrepency in average costs is the value of motion picture copies deposited ($860 versus $28 for fabric designs), otherwise the difference is in the number and type of hours of labor necessary to register. For example, the average amount of senior lawyer or executive time per registration in the motion picture industry is 8.8 hours compared to 1.3 hours in the textile industry (an average of 1.6 hours is spent across both industries by senior attorneys in law firms). Cost to the two industries for recordation is about $3.0 million ($2.9 million to the motion picture and $100,000 to the textile industries). The average cost to the U.S. Copyright Office is about $16.70, but the average cost to the motion picture industry is estimated to be $970 and $185 to the textile industry.

It is assumed that the two industries would not choose to incur such large expenditures if the value of these formalities were not at least as great. Thus, for registration, deposit and recordation, the "value" to the two industries is estimated to be at least 32 times the cost to the Copyright Office. The question then becomes what positive effects are derived from these formalities that would warrant such expenditures. The beneficial effects of the formalities are largely derived in three ways:

- avoidance of infringements,
- enhancements to legal processes (i.e., infringement disputes and lawsuits), and
- in non-litigation processes.

In order to determine the effects on the first two above, we first describe what happens in the two industries concerning monitoring for potential infringements and infringement disputes and lawsuits.

The logical flow of works registered and results of infringement monitoring, disputes and lawsuits are as follows:

	Motion Picture	Textile
Works registered with U.S. Copyright Office	6,330+	9,490+
Potential Infringements Identified Through Monitoring	4,300	375
Disputes Initiated (Disputes Disregarded)	3,890 (410)	337 (38)
Lawsuit Initiated (Settled)	747 (3,143)	153 (184)
Trial to Judgement (Settled prior to Judgement or during trial)	96 (651)	26 (127)

Obviously, potential infringements involve more than the estimated 15,820 works registered in the past year by the two industries, although the 6,330 motion picture works and 9,490 fabric design works recently registered give a relative perspective when considering the number of potential infringements identified through formal and informal monitoring.

The two industries expended about $1.3 million in monitoring for potential copyright infringements. About 4,300 potential infringements were identified in the motion picture industry (at a cost of $1.1 million). Only 375 potential infringements were disclosed through monitoring in the textile industry (at a cost of about $100,000). The cost of identifying potential infringements averages about $255. The reasons for the discrepency in number of potential infringements identified in the two industries is not known, but it may be because of the inherent difficulty in recognizing copyright infringements in fabric designs. Of the potential infringements, about ten percent were disregarded in each industry.

Of 3,890 potential infringements in which a formal dispute was initiated in the motion picture industry, about 80 percent were settled (2,840 in favor of the potential plaintiff and 303 in favor of the potential defendent). The total costs to the industry of these proceedings was $1.7 million and the settlements, in addition to agreements to terminate the infringement activities, came to an estimated $9.8 million in monetary compensation or recovered legal fees. Thus, the industry was willing to pay about $440 per dispute initiated. The average cost and outcomes of initiated disputes are quite different in the textile industry. There, the average cost of waging the estimated 337 disputes that were initiated was $2,670 per dispute (or six times that of motion picture disputes). The number of disputes settled was 184 (107 settled in favor of the potential plantiff and 77 in favor of the potential defendent). A much higher proportion of settlements in the textile industry was in favor of the potential defendent than in the motion picture industry (22% versus 8%). Also, a much higher proportion of the initiated suits in the textile industry went to formal lawsuits (45% versus 19%). All of these results suggest that copyright infringements in fabric designs are much more difficult to establish than with motion pictures.

Of the 747 lawsuits that were initiated in the motion picture industry, 651 were settled (562 prior to trial and 89 during trial) and 96 are estimated to have proceeded to judgement. The cost to the industry of these lawsuits was estimated to be about $5.0 million, with settlement awards (statutory damages, legal fees or expenses, monetary settlement, etc.) to the plaintiffs of $11.5 million and monetary awards to defendents of about $200,000. Thus, the average cost to the industry of lawsuits was about $6,700, with awards averaging well over twice that amount ($15,700). Similar results were observed in the textile industry. There, 153 lawsuits were initiated with 26 resulting in trial to judgement (i.e., 17 percent of the lawsuits compared to 13 percent for motion picture lawsuits). An estimated 106 lawsuits were settled prior to trial and 21 during trial. The cost to the textile industry of these lawsuits was $1.4 million, with settlement awards of $8.31 million to the plaintiff and about $100,000 to defendents. Again, the average cost of lawsuits is higher than for the motion picture industry ($9,200 versus $6,700), but awards are larger as well ($20,900 versus $15,700). These results reinforce the possible difficulties encountered with fabric design copyright infringements. However, in both instances the stakes (i.e., value of and revenue from the works) must be substantial due to what the industries are willing to pay: $21.7 million in the motion picture industry and $4.8 million in the textile industry.

There is substantial evidence of the important effects of the copyright formalities in the copyright community, at least involving motion pictures and fabric designs. Interviews with key persons in the U.S. identified four principal advantages of copyright formalities including:

- potentially avoids copyright infringement,
- enhances initiating and expediting infringement proceedings,
- provides prima facie evidence of the validity of the copyright and it places the burden on the defendent of disproving validity of ownership or facts given in the certificate, and
- provides a mechanism for collecting statutory damages.

These positive effects are largely borne out in results of the survey of attorneys and senior executives in the motion picture and textile industries.

While there is no direct evidence of the effect of copyright formalities on avoidance of infringement, it was found that copyright formalities are very important to settling disputes and lawsuits:

- registration is estimated to be very or somewhat important in resolving 76 percent of disputes and 80 percent of lawsuits;
- a substantial proportion of survey respondents indicated that copyright notice (52%), registration (66%), deposit (25%) and recordation (23%) were important to their most recent lawsuit;
- prima facie evidence contained in the registration certificate was found to be very or somewhat important in helping settle or terminate litigation in 76 percent of the lawsuits; and

- when prima facie evidence was challenged, the challenge was unsuccessful 83 percent of the time;

Furthermore, comparisons with non-U.S. Copyright systems appear to favor the U.S. system.

The survey of copyright attorneys and industry executives suggest that they have considerable experience with foreign copyright systems. Only 14 percent of the respondents had no experience in conducting copyright related matters in forgeign countries (48% had slight, 24% moderate and 14% extensive experience). When posed the question "As between the United States system and the foreign system with which you are most familiar, which would you prefer to have in force in the United States?", 90 percent preferred the current U.S. system, while only ten percent favored the foreign system. Opinions of respondents showed that they overwhelmingly felt the U.S. system to be superior regarding:

- ease of determining ownership of copyright (63% U.S. superior, 32% no substantial difference, 5% U.S. inferior);
- usefulness/reliability of registration system (63% U.S. superior, 28% no substantial difference, 9% U.S. inferior);
- cost of using registration system (57% U.S. superior, 27% no substantial difference, 16% U.S. inferior); and
- usefulness/reliability of recordation system (64% U.S. superior, 31% no substantial difference, 5% U.S. inferior).

Similar results were observed for relative performance of U.S. and foreign copyright systems for conducting copyright litigation.

Berne-Compatible Systems

We also looked at several alternative copyright systems, particularly regarding aspects of a system that would be Berne-compatible. Several alternative systems are theoretically possible between the extremes of maintaining the current U.S. system of copyright formalities and doing away with it completely. We felt that it would be a useful exercise to explore the hypothetical possibilities of maintaining the U.S. system of copyright formalities but operating it differently from the current system, such that it would help satisfy the requirements for Berne admittance.

Our discussion of the requirements for a Berne-compatible system were guided by the following two assumptions:

- First, we assumed that the U.S. Copyright Office would continue to play a major role in the management or implementation of copyright formalities.
- Second, we assumed that the system of formalities would be voluntary, in the sense that it would be up to the individual creator to determine the degree and manner in which he or she would want to use the formalities.

According to the text of the current U.S. copyright law (revised 1976), ownership and the right to protection in an intellectual or artistic work is automatic at the moment of creation. However, although the use of U.S. copyright formalities is voluntary, the capability to invoke or access the full range of remedies attendant to copyright protection is conditional on the use of these formalities. The conditions attached to the formalities are set forth in U.S. copyright law. Acknowledging our legal and political naivete, we perceived that those aspects of the current system which would require "fixing" (so as to be Berne-compatible) are the conditions embedded in the copyright statutes governing the formalities, not the formalities themselves, per se. On this premise we attempted to identify the conditions governing the formalities and related factors, and looked at ways in which these conditions could be altered so as to comply with Berne membership requirements. The hypothetical modifications to the conditions are discussed in Section 4 of this report.

SECTION 1
INTRODUCTION

The copyright law of the United States differs from that of other major nations in that it contains several provisions known as "formalities." These formalities, several of which are administered by the Copyright Office, include:

- the use of a copyright notice (viz. the ©),
- a system for registering claims to copyright,
- a system for recording transfer of copyright ownership and other information pertaining to copyright, and
- a system for depositing copies of published works.

These formalities are largely unknown outside the U.S. and, perhaps surprisingly, within this country there have been no rigorous objective examinations of the usefulness of formalities. This is the first substantial effort in that direction of which King Research, Inc. is aware.

An approach to addressing issues of this type, which has been effective in areas such as social and defense programs is cost-benefit analysis, i.e., to estimate the costs and benefits of alternative feasible systems and use this information to select a preferred system and course of action. **The principal objective of this study is to determine whether cost-benefit analysis can be used to evaluate U.S. copyright formalities.**

The approach of this study is twofold.

1. Develop a conceptual framework for analyzing the costs and benefits of copyright formalities.
2. Implement this framework by conducting a pilot program that:
    - addresses the motion picture and fabric design industries only, and
    - compares U.S. laws and practices with those in England, France, and Sweden.

The motion picture and textile industries were selected for doing the pilot study because of their dynamic nature, and their diversity. The motion picture industry is in a state of rapid change. New technology and new distribution methods may be changing the structure of the industry from one dominated by large, traditional corporations to smaller, regional interests involved with cable, satellite transmission, and video recording. Ownership rights are a key issue, as attested to by the recent writers' strike and negotiations on off-the-air taping.

Textiles are also changing rapidly. This traditional, highly decentralized industry is undergoing a transition in response to developments of synthetic fibers and constant changes in fashion. In both Europe and the United States, competition from imports produced in countries with much lower wage rates exacerbates the need to compete, to stay ahead.

These are two very different industries. But they both have one thing in common: they depend upon creativity for the development of new products. One is a very heavy user of copyright. The other also uses copyright, but to a much lesser extent.

These two industries serve as examples of the way that U.S. copyright operates differently from other countries. It is the key difference in terms of the formalities which serves as the focus for this study.

In Section 2 of this report we describe the key conceptual issues to be addressed, and we also describe the cost-benefit framework used during the course of the study. The key point made in that section is that it is important to develop an understanding of the functions and participants involved in exchanging information about the facts of ownership. In Section 3 we present the procedures used to collect and analyze data required by the conceptual framework.

In Section 4 we describe qualitatively the formalities of copyright systems in general, those of the U.S. Copyright System, those of foreign copyright systems, and finally those of a "Berne-Compatible" System which corresponds closely to the current U.S. Copyright System.

In Section 5 we describe quantitatively the costs, performance and effectiveness of that operation at the U.S. Copyright Office, and of the entire U.S. copyright community as it applies to the motion picture and textile industries.

In Section 6 we provide a summary of input costs, output quantities and the effects of copyright registration and deposit, recordations, monitoring, and infringement disputes and lawsuits.

SECTION 2

CONCEPTUAL FRAMEWORK FOR A COST BENEFIT STUDY

2.1 Introduction

Our conceptual framework for performing a cost benefit study involves six tasks:

1. Describe the system to be evaluated
2. Determine system goals and objectives
3. Determine evaluation goals and objectives
4. Establish cost, performance and effectiveness measures
5. Determine data collection methods
6. Determine analysis methods.

In this section, Tasks 1 to 4 are discussed. Tasks 5 and 6 are discussed in Section 3.

2.2 System Description

The first step in conducting a cost and benefit analysis is a system description. Here we are concerned with, first, understanding how the system works, and secondly, with portraying the system in terms of constructs which logically partition the cost and benefit-related aspects of the system. Depending on the system under consideration, the constructs used in describing it may address functions performed, system participants, types of use or users, other factors, or some combination of factors. Ultimately, the approach taken to describing or modelling the system should allow differentiation, in terms of both costs and benefits, among system alternatives. This study of the copyright formalities is an exploratory one, in which the alternatives are broadly defined and a major objective is to identify variables which would be relevant to considerations of any alternative. What we are aiming for is a very flexible analysis framework which will allow us to test hypotheses about the effects of activities within the system on the benefits obtained. The framework should also be formulated in such a way as to ultimately allow specific areas of interest to be considered in more detail while maintaining the overall system context. In this way, for example, the effect of a procedural change in deposit could be analyzed when the overall framework is established and overall costs and benefits are identified.

The exploratory nature of the study speaks for making several types of distinctions within the system rather than any one type in great detail. Possibilities include the different formalities, the functions performed, the system participants and types of use. Normally, field of application would also be an area of differentiation as well, but we are restricting our analysis, at this point, to the motion picture industry and the textile industry.

The formalities we are addressing are, of course, registration, notice, deposit, and recordation of transfer. For most purposes, registration, notice and recordation can be considered together, with deposit considered separately. Registration, notice and recordation are functionally similar, each concerned primarily with establishing facts of ownership.

System participants are an important consideration -- generally speaking it is important to know who bears the costs of an activity and to whom the benefits accrue. This is certainly a key issue with copyright where on the surface, the cost to the government of the formalities would appear to be greater than with a formality-free system. In considering participants in this study, we will distinguish between government and other participants and among owners, intermediaries and users as defined in our proposal:

- Owners -- the individuals or organizations who create and/or own rights in the protected works as well as the facts of ownership which may be created, stored, retrieved, and used.
- Intermediaries -- the individuals or organizations such as the U.S. Copyright Office, who facilitate the creation, storage, retrieval, or use of the facts of ownership.
- Users -- the individuals or organizations who obtain and apply the facts of ownership, often for the purpose of economic gain.

A flow chart in Section 5 illustrates how these participants interact with the U.S. Copyright Office, the principal intermediary.

Functions identified in our proposal were creation, storage, retrieval and use. These, of course, have to be considered in the context of the different formalities. Distinguishing among the functions is useful in at least two senses: first, in building up the costs of the copyright formalities and, second, in allowing the consideration of alternatives which would affect only some of the functions. At this point these four functions seem relevant to our framework.

Type of use is a related categorization of the system where different uses may be categorized as follows:

- Support resolution of disputes and lawsuits related to copyright
- Identify or locate the current owner of a particular work which you or a client were considering purchasing or licensing
- Determine whether a particular work was still protected by copyright
- Determine whether copyright rights in a particular work had been transferred
- Determine whether a work similar or identical to another work had already been registered
- Determine whether additional correspondence related to the original copyright certificate might be maintained by the U.S. Copyright Office
- Check to see if a work had been correctly registered
- See what else a particular author or creator had produced
- Determine the date of a work's publication
- Determine the date of a work's registration
- Find out if the author or creator was the owner
- Find out if the owner was the author or creator
- Locate a group of works which might be available for purchase or licensing

- Determine whether a work with the same or similar title had ever been registered
- Other use(s)

These uses map into the functions. Providing information necessary to secure permission to use a work, for example, is related to the retrieval function. Ultimately, the value of the formalities -- phrased a different way, the value of the overall system as opposed to a functional component of it -- is in the use of information retrieved from the system.

This discussion establishes the primary differentiations to be made in considering the costs and benefits of copyright formalities on those among the various participants and functions, with the use function further broken down by category of use.

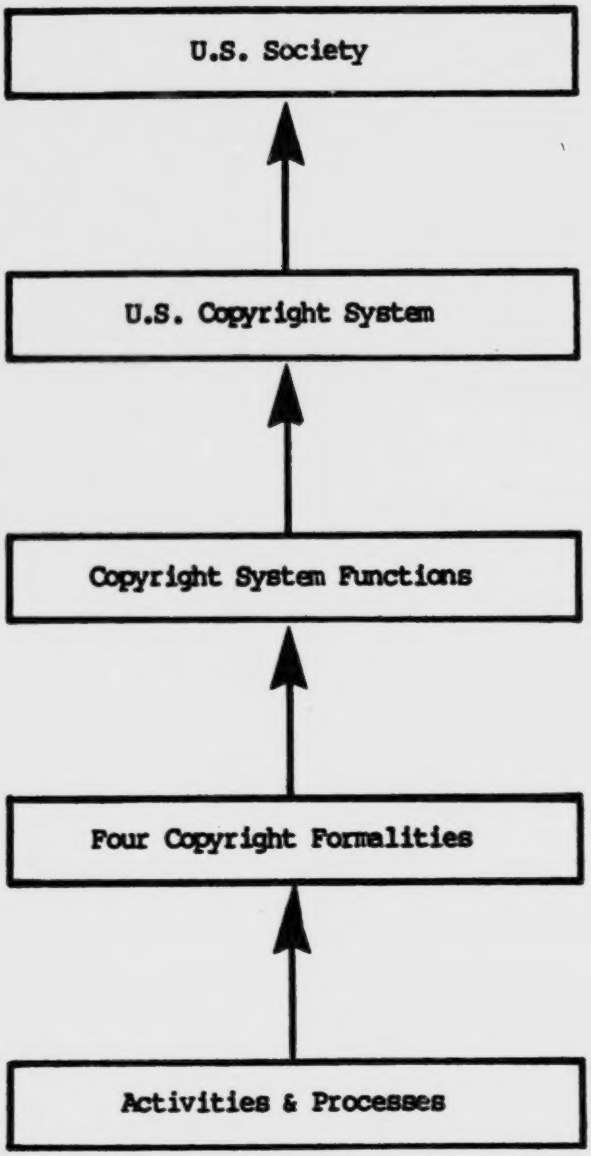
The system we have considered above is the system of copyright formalities, the primary focus of our study. In looking at the effectiveness of this system, however, we find that we are concerned with the effect of the formalities on the copyright system, and to some extent the effect of the copyright system on U.S. society at large. To establish effectiveness, we considered a total of five levels as shown in Figure 1. The four formalities that are addressed in this study require a number of activities and processes in order to be accomplished. We have indicated that these four formalities, in turn, support some basic copyright system functions that must be achieved in order for the copyright system in the U.S. to work as envisioned. The copyright system, in turn, is devised to make our society a more orderly and beneficial one. One could go on to say that our society resides in an international environment as well.

2.3 Determine System Goals and Objectives

System goals are an expression of the purposes of a system; objectives specify the goals in measurable terms. The primary goal of the formalities, taken together, is to support the copyright system in the U.S. This can in turn be translated into goals for the four formalities and the goals for the four formalities in turn into objectives. Ultimately, we will want to determine the costs of accomplishing each of the objectives and the resulting benefits.

FIGURE 1

FIVE LEVELS OF THE COPYRIGHT SYSTEM IN THE U.S.


U.S. Society
U.S. Copyright System
Copyright System Functions
Four Copyright Formalities
Activities & Processes

Our understanding of the goals and objectives of the copyright formalities is reflected below.

Goal of Registration -- to create a system of records containing the facts of ownership.

Goal of Notice -- to create records within the works themselves containing the facts of ownership.

Goal of Recordation -- to create a system of records containing the facts of transfer of ownership of works.

Objectives of Registration, Notice and Recordation:

1. to provide evidence of ownership in support of litigation
2. to provide evidence of ownership in assignments and transfer of copyright via contracts and licenses
3. to provide information about ownership for other purposes, e.g., to prevent duplication of titles, to locate author addresses.

Sub-objectives of each of the above objectives:

1. to provide information on the facts of ownership and an identifiable location
2. to provide mechanisms for retrieval of the facts of ownership
3. to provide official documents on the facts of ownership.

Goal of Deposit -- to facilitate the development of a national collection and bibliography, and to provide evidence in support of registration.

2.4 Determine Evaluation Goals and Objectives

The primary purpose of this study is the formulation and implementation of a conceptual framework for addressing the volume, cost and effectiveness of activities related to the four formalities. From this statement of purposes comes a primary study goal, that is, the description of the current system of copyright formalities in the U.S. Objectives associated with this goal are the separate identification of volume, cost, and effectiveness related to the formalities, providing a measure of how well system objectives are being met. Included under the primary study goal are the need to identify the relationships among system costs and effectiveness, and the need, insofar as possible, to identify those variables affecting costs or effectiveness. This type of in-depth analysis is facilitated by the application of the framework developed to activities in other countries. A second study goal is to develop a framework for describing alternative systems of copyright formalities (or their substitutes) both in the U.S. and in other countries. Included in this framework would be the system costs and effectiveness and variables affecting them. Ultimately this framework would enable the Copyright Office to describe alternatives to the U.S. system of formalities in terms of their costs and effectiveness.

2.5 Establish Cost, Performance and Effectiveness Measures

We have approached this study from a systems perspective where formalities might be considered processes in this system (see Figure 2). Each formality has input resources which are required in order to provide it. These resources are measured in terms of hours of labor (senior level and other) and dollars expended. Output or return from these resources expended results in works registered and deposited, works in which notices of copyright appear, and works in which transactions are recorded. The output or return is measured in terms of the number of works involved for each formality. Effectiveness of the formalities involve the effects that the formalities have on copyright functions such as registering, etc., and legal processes such as identification of infringements, disputes and law suits. There are a number of participants involved with each of these functions. Each participant requires input resources and as a result will achieve some output or return and, perhaps more importantly, some effects. For example, plaintiffs and defendents both require labor and costs which results in returns such as continuation or termination of alleged infringement activity, injunctions or monetary awards (being favorable or unfavorable depending on the perspective). The effectiveness of the formalities is in how they affect the outcomes of these legal processes. There are also higher order effects of formalities such as providing incentives to creators and those who market their works.

The copyright system is not too difficult to describe in terms of input resources expended, outputs or returns, and effectiveness of copyright formalities. What is difficult to measure are the costs and benefits

FIGURE 2

INPUT, OUTPUT, EFFECTIVENESS AND COST AND BENEFIT ANALYSIS OF COPYRIGHT SYSTEM FORMALITIES

Process/Formalities	Input Resources	Output/Return	Effectiveness
Registration	Labor Hours/ Dollars	No. of Works Registered and Deposited	Effects on (1) Identification of Infringements, Disputes and Lawsuits (2) Participants (i.e., Creators, Legal Community, U.S. Copyright Office, Users etc.) and (3) the overall Society
Notice	Labor Hours/ Dollars	No. of Works in which Notices Appear	
Recordation	Labor Hours/ Dollars	No. of Works in which Transactions are Recorded	

Cost and Benefits: Favorable (Benefits) and Unfavorable (Costs) Comparisons with Alternatives of the formalities using another cost and benefit approach. By costs and benefits we mean the unfavorable (cost) and favorable (benefit) comparison of the formalities with some alternative, such as (1) legal modification of a formality or (2) not having the formality, etc. Comparisons can be made from the perspective of all participants and considering their input resources, output or returns, and effectiveness. The difficulty is twofold; first identifying relevant alternatives and (2) assessing or speculating what the results are of comparing the current formalities and their alternatives. Comparing the U.S. system with non-U.S. copyright systems that do not have the formalities helps, but it is still far from a good comparison. Our original proposal to the U.S. Copyright Office defined benefits as what we define here as higher order effects. However, we do think it is useful to at least speculate about these comparisons.

Critical to the identification of consistent measures is the definition of a standard unit, which we call a "transaction". Transactions occur among and within the various system participants; they may be described in terms of:

- the individual or organization initiating the transaction
- the individual or organization responding to the transaction
- whether the transaction concerns the facts of ownership
- whether the transaction is initiated as a request for information or materials
- whether the transaction involves funds, physical materials, or information
- the transaction channel (mail, telephone, in person, etc.)
- whether the transaction involves an international component (e.g., purchase of distribution rights to a foreign film)
- the cost in terms of time, money and other resources involved in performing the transaction
- whether the transaction is voluntary or required by law
- the system function supported by the transaction
- the actual or perceived benefits accruing to the transaction

- the "unit cost" of the transaction or the total cost of all transactions, aggregated over a variable such as country, function, or participant.

Section 5 provides a quantitative description of most of these transactions in both the U.S. Copyright Community and the U.S. Copyright Office.

Procedurally, cost, performance, effectiveness and benefit measures are identified by detailing activities or transactions for each formality, function and participant. This point is amplified in Section 6.

SECTION 3

DATA COLLECTION AND ANALYSIS METHODS

3.1 Introduction

To apply the framework described in Section 2, data are required concerning the usage, the costs and the effectiveness of the copyright formalities. These data were collected from a number of sources which fall into these categories:

- The U.S. Copyright Community
- The U.S. Copyright Office
- Persons involved in non-U.S. Intellectual Property.

In addition, detailed methods and procedures are described for a survey of the U.S. Copyright Community.

3.2 Collection of Data from the U.S. Copyright Community

This pilot study focused on two industries chosen purposely by the U.S. Copyright Office: the motion picture industry and the textile industry. Data describing the nature, volume and costs of activities related to copyright formalities in these two industries were obtained in two stages. First, a series of interviews were held with key personnel who were concerned with copyright from the motion picture and fabric design industries to solicit their ideas concerning what information is available and what additional information should be collected from the U.S. Copyright Community. Second, a questionnaire was developed and used to survey U.S. Copyright attorneys and industry executives associated with the motion picture and textile (or fabric design) industries.

Interviews with Key Persons from the U.S. Motion Picture and Textile Industries Personnel

A preliminary list of key individuals, consisting of both industry executives and attorneys affiliated with the motion picture or textile industries, was prepared from several sources. Attorneys with substantial copyright litigation experience in connection with either motion pictures or fabric designs were identified through copyright litigation cases listed in the Commerce Clearinghouse Directory of Copyright Law Decisions. Industry executives affiliated with the production and/or sale of fabric designs were identified through the American Textile Manufacturers Institute and our project consultant on textiles. Industry representatives selected from the motion picture industry were identified through the membership list of the Motion Picture Association of America. Names from these sources were narrowed to the following 13 individuals based on follow-up communications by both telephone calls and letters:

TEXTILES

James Silberman
Blum, Kaplan, Friedman
Silberman & Beran
1120 Avenue of the Americas
New York, New York 10036

John A. Gussow, General Counsel
M. Lowenstein Corporation
1430 Broadway
New York, New York 10016

Anthony LoCicero
Amster, Rothstein & Engleberg
90 Park Avenue
New York, New York 10016

Evelyn Leing
Textile Distributors Association
1040 Avenue of the Americas
New York, New York 10018

Michael Frimer
Patent Counsel
J.P. Stevens
1185 Avenue of the Americas
New York, New York

Marvin Pelzer
Vera Scarves
5 East 37th Street
New York, New York 10016

Lawrence Krell
Marcus Brothers Textiles
1460 Broadway
New York, New York 10036

MOTION PICTURES

Harvey Shapiro
Sargoy, Stein & Hanft
105 Madison Avenue
New York, New York 10016

Walter Josiah
Vice President & Legal Counsel
Paramount Pictures Corporation
1 Gulf & Western Plaza
New York, New York 10023

Will Nix
Motion Picture Industry
of America
522 Fifth Avenue
New York, New York 10036

Norman Alterman
Vice President
Motion Picture Export
Association of America
522 Fifth Avenue
New York, New York 10036

Alan Benjamin
Vice President, Secretary
United Artists
1460 Broadway
New York, New York 10036

Ken Benjamin
Executive Director, Real
Estate Counsel
Columbia Pictures Industries
711 Fifth Avenue
New York, New York 10022

Each of the above individuals was identified as being particularly knowledgeable concerning copyright matters in either the motion picture or textile industries.

Interviews lasting between one and two hours were arranged with each of these people to solicit their opinions concerning copyright formalities in their respective industries. Prior to the interview they were mailed a set of draft summary questions, and were requested to review them with respect to their organization in terms of the following points:

1. Are the survey questions relevant to your firm? How would your firm go about responding to them? Who in your firm would respond?

2. Are there aspects of copyright use which are not covered by these questions?

3. As we gradually turn this list of questions into a real questionnaire addressed specifically to your industry, what kind of words/language should we use? What words/language should we avoid?

4. The "bottom line" of this study is that we are looking at the costs and benefits of copyright formalities. This means we need to measure what kinds of transactions involve copyright formalities, what costs are associated with these transactions, and the associated (quantifiable and nonquantifiable) benefits of these formalities. Do these questions sufficiently address the transactions, costs, and effectiveness associated with the formalities?

These interviews yielded much background information and helped shape the questionnaire used as the basis for the survey of U.S. copyright attorneys and industry executives.

Survey of U.S. Copyright Attorneys and Industry Executives

This survey was carried out in three tasks:

- Development of questionnaire,
- Development of population lists,
- Conducting the survey.

The preliminary questionnaire developed during the course of interviews with individuals from the U.S. Motion Picture and Textile industries was refined in two ways:

1. by a series of working sessions involving personnel from both the Copyright Office and King Research, Inc., in which the questionnaire was thoroughly reviewed and edited, and
2. by submitting a draft version (of the questionnaire) to industry executives and six experienced copyright attorneys and soliciting their comments on how the questionnaire could be improved.

The final version of the questionnaire is given in Appendix A. It consists of six main sections:

A. Professional, Educational and Employment Background
B. Copyright Disputes
C. Involvement in Copyright Registrations
D. Recording Transfers of Copyright Ownership and Other Documents with the U.S. Copyright Office
E. Use of Copyright in a Non-Litigation Context
F. Foreign Copyright Experience

Three lists describing the three populations of relevance for the survey were developed. These populations were:

1. Copyright attorneys connected with motion pictures and textiles.
2. Motion picture organizations involved in copyright registration and deposit.
3. Textile industry organizations involved in copyright registration and deposit.

The list of copyright attorneys connected with motion pictures and textiles was constructed from the following lists:

- American Bar Association; ABA Copyright-related committee membership lists.
- Copyright Society of the U.S.A.; membership list.
- Commerce Clearinghouse, Directory of Copyright Law Decisions 1978-1981, and CCH Reporter, August 1981 through January 1983 [used to identify motion picture copyright litigators and textile copyright litigators].
- Los Angeles Copyright Society; membership lists.
- Lawyers Association of the Textile Industry; membership lists.

These lists were merged and cross-checked for duplication yielding a total of 1,019 attorneys involved with copyright. While the resulting list did not indicate the amount of experience or involvement in copyright of each attorney, it did indicate that at least half of the attorneys were known to be (or at least possibly) connected with the textile or motion picture industries, wherein the copyright-related activities occurred.

The list of motion picture organizations was obtained from the International Motion Picture Almanac. In our interviews with motion picture industry representatives, we learned that the distributors usually handle the registration and deposit for the films they distribute. This is true of most distributors of theatrical films, whether or not they own all rights to the films. Because of this fact, we selected the 79 distributors and 78 production/distribution firms listed in the above mentioned almanac yielding a total core list of 157 motion picture organizations.

The number of textile organizations that might be included in our population was potentially very large because it would include textile mills, converters, independent textile designers, and to some degree large retail organizations. Although a partial count of such organizations exceeded three thousand, it was discovered that most of these organizations were not involved with fabric designs and/or, as a rule, did not register works for copyright, and therefore, would not be suitable respondents for the questionnaire.

Consequently, we identified a core population of approximately 1400 textile firms which we knew with some certainty were involved in the production and/or sale of printed or woven fabrics. A sample size of 200 was selected from this population, of which 100 were considered to be ones likely to register their works. Sources used to compile this core list included the following:

- a list provided by Sidney Gluck, Project Consultant
- Textile Distributors Association Membership Roster
- American Printed Fabrics Council, Inc.
- Names of registrants provided by the VA Examination Section, U.S. Copyright Office
- Davison's Textile Blue Book
- New York Yellow Pages.

Copies of the questionnaire shown in Appendix A were mailed to each individual or organization appearing on the three population lists described above. Each addressee was assigned an identification number which was affixed to each questionnaire, and to each mailing label. Completed questionnaires were mailed to King Research, Inc. in Rockville, where they were reviewed, checked, and filed. Follow-up telephone interviews were made to respondents who had gaps or inconsistencies in their questionnaires. The questionnaires were later coded for data entry and entered into the computer database of the Library of Congress as SAS data sets. Print-outs of these SAS data sets were compared against the original questionnaires to detect keypunching errors, and the SAS data sets were updated to correct errors.

Collection of Data from the U.S. Copyright Office

KRI personnel were first briefed by the Senior Administrative Officer (for Budgeting) of the Copyright Office on the overall organization and work flow of the Copyright Office, and then given a walk-through tour corresponding to a copyright claim passing through the registration process. They were also given charts describing the Copyright Office organization and workflow, and documents describing these charts. Later the KRI project staff briefed the Acting Register, the division chiefs and other key Copyright Office personnel on the background and data needs of our pilot study, and then conducted a series of interviews with Copyright Office personnel most knowledgeable in the areas of their specific needs. These information needs included the following:

- An understanding of the administration of formalities of the U.S. Copyright Office.
- The number of transactions per year associated with administering each of the formalities, and with using the information available from the U.S. Copyright Office.
- The costs associated with performing each of these transactions, including costs of personnel, space, material and other costs.
- The revenue derived from fees for filing registrations, filing recordations of documents, etc.
- The value of materials deposited with the Copyright Office and transferred to the collection of the Library of Congress.

This information was requested for three categories of works: motion pictures, fabric design, and all classes of works registered by the Copyright Office. This information was readily available for "all classes of works," but had to be estimated for "motion pictures" and "fabric designs." Section 5.2 contains the more important results derived from this data collection effort.

3.3 Collection of Data from Non-U.S. Intellectual Property Sources

Non-U.S. data collection involved these steps:

1. An extensive literature review pertaining to foreign copyright systems was performed.
2. Key individuals, (namely copyright experts, copyright lawyers, and representatives of motion pictures and textile organizations) were identified, screened, and contacted with regard to future interviews.
3. On-site interviews were made with many of these individuals.

The literature review provided not only a deeper understanding of how the foreign copyright systems work, but also an extensive bibliography, which is contained in our report on the Foreign systems entitled "A Discussion of the Relevance of European Copyright and Design Protection Systems to Copyright Formalities in the United States," April 1984.

A preliminary step in conducting the on-site interviews involved a series of letters and phone calls. A crucial part of this step required that a letter of introduction from the Copyright Office precede each initial contact by King Research with organizations such as embassies, governmental bodies, associations, and international organizations. In addition, as a courtesy to the U.S. State Department and as a hedge against any unforeseen problems of political protocol, or of any other nature, a letter was sent from the Copyright Office to the Department of State informing them of this study and our plans for data collection in England, France, and Sweden. Another important part of this step was identifying the most appropriate individual within each organization to whom correspondence should be addressed. For certain organizations, such as national associations, this was facilitated through names of contacts supplied to us by embassies, international organizations, trade associations and others.

Outlined below are various organizations which were contacted, the sequence in which they were contacted, and the steps within each sequence. Sequences 2 and 3 required a minimum of one month each.

SEQUENCE 1

A. U.S. Department of State

   1. KRI telephone call -- identify correct person (possibly Liaison for Information).

   2. Letter from Copyright Office.

   3. Telephone call or letter from King Research -- one week after receipt of Copyright Office letter.

B. Embassies (England, France and Sweden)

   1. KRI telephone call -- identify correct person.

   2. Letter from Copyright Office.

3. Telephone call and/or letter from King Research — one week after receipt of Copyright Office letter. (This letter stated the intentions of the study and requested clearance and assistance in contacting pertinent organizations in the country; also requested assistance in contacting international organizations. When speaking with embassies, it was important to obtain precise names of individuals in the country who have governmental responsibility for these issues.

SEQUENCE 2

A. International Bodies (UNESCO, WIPO, etc.)

  1. KRI telephone call (if required).

  2. Letter from Copyright Office.

  3. Letter from King Research -- one week after Copyright Office letter.

  4. KRI follow-up telephone call -- one week after KRI letter (set up time for visit or interview).

B. Trade Associations and Consulates -- a number of these are located in New York.

C. Swedish Insitute for Foreign Research -- provides a clearinghouse to facilitate persons interested in conducting research in Sweden, i.e., translators, referrals, accommodations, etc.

SEQUENCE 3

A. Government Bodies (Federation Nationale des Industries, Techniques du Film and Cinema et Television, British Textile Confederation, etc.)

  1. Letter from Copyright Office.

  2. Letter from King Research — this letter specified the names of various organizations with whom we desired to speak with and an approximate timetable for conducting our visits.

  3. KRI follow-up letter or telephone call -- requesting a specific interview date.

B. National and Trade Associations (British Fabric Association, Textilradet, Swedish Film Insitute, etc.)

C. Selected Textile and Motion Picture Firms

  1. Letter from King Research.

  2. Follow-up letter or telephone call, if required.

On-site Interview with Key Individuals

On-site interviews were conducted by Dr. Dennis McDonald of KRI with individuals who are identified in Appendix B.

Prior to each interview, each interviewee was sent a letter outlining the background of the Cost-Benefit Study of Copyright Formalities, the purpose of the interview and a number of specific questions. These questions are presented in Appendix C. After each interview, a report was prepared by Dr. McDonald summarizing the major points emerging from that interview. The major findings resulting from these interviews are reported in a report on the foreign systems, identified above.

3.4 Data Analysis Procedures

Data collected by means of the procedures described above were analyzed both qualitatively and quantitatively. Most of the data collected during the various interviews were analyzed qualitatively and used to shape the various intermediate and final products of this project, such as working papers and reports, and the questionnaire which formed the basis of the Survey of Copyright Attorneys and Industry Executives.

The quantitative data collected during this study were analyzed to develop the numerous tables presented in Section 5. Some of these tables, particularly those related to number of transactions, costs, and income, were derived using straight-forward logic and simple arithmetic, using numerical data already available from the Copyright Office. These analyses warrant no further description. But the tables and other results derived from the Survey of Copyright Attorneys and Industry Executives required computer tabulation, and do warrant further discussion. This is especially true because both the questionnaire data and the programs used to enter, verify, and analyze these data now reside on the Library of Congress' mainframe computer.

Computer Tabulation of the Copyright Attorney Survey

Instructions (called a codebook) were developed for coding each of the 377 items appearing in the Survey Questionnaire shown in Appendix A.

For example, a missing value of a one digit item would be coded as a "7" for "not applicable, an "8" for "don't know" or a "9" for "no response." This codebook was used to code each item of each returned questionnaire that did not have a definitive response. The responses of the coded questionnaire were then keyed into the database of the Library of Congress' IBM mainframe computer. This data entry was performed by means of a specially developed computer program named RFPCAS* which permits full screen data entry of the value of each questionnaire. Because of the length of the questionnaire, five screens were required to cover one questionnaire. The raw data so entered were saved as a library member with the name CASDATA. A SAS program called DATCHK was used to contruct, save, and print out a SAS dataset, called SAVE.ATTSURV, from the raw data. The resulting print-out of the data was then compared against the actual coded questionnaires to detect errors. A small number of errors were detected and those were corrected in the SAS data set SAVE.ATTSUR using SAS/FSP*, a very convenient tool for editing and updating SAS data sets. Finally, a SAS program, called CASFREQ, was used to first categorize the survey results by type of firm and area of work, and then to produce tables of frequencies, average values and other statistics for each of the items appearing on the questionniare. In addition, a number of ad hoc statistical analyses were performed to address specific issues that arose during the course of our analysis. Most of the results produced by the above analyses are presented in Section 5, under "The U.S. Copyright Community."

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*RPFCAS stands for Roscoe Programming Facility program for the Copyright Attorney Survey.

* (SAS/FSP was very recently made available on the Library of Congress' mainframe computer. Had it been available earlier, it could have been used instead of RPFCAS.

SECTION 4

QUALITATIVE DESCRIPTION OF COPYRIGHT SYSTEMS*

4.1 Introduction

The concept of copyright probably knows no uniform definition in today's world. Nonetheless, it is an almost universally recognized concept. Historically, it is based on the premise that the creators of intellectual works such as works of art, music, literature, designs, films, etc., are the rightful owners of such works, and as such are entitled to the right to prevent another person from making commercially significant unauthorized uses or reproductions of their creations. To state in another way, ownership and the right to protection arises from the act of creation and the moment a work takes tangible form, copyright is automatically an inherent part of the work.

These rights are asserted in the copyright laws or legal systems of nations throughout the world. The purpose behind national copyright systems is to stimulate artists and composers to express their ideas and visions in forms which can be communicated to other members of society. It seeks to encourage authors to write, designers to design, film makers to make movies, musicians to compose, etc., by giving them rights of control over how their works may be used.[1] The underlying idea is that the public good is advanced by the stimulus for creation which such control or ownership provides. The assumption is that the artist or writer who knows that financial benefits or formal recognition will flow from the act of creation will proceed to create, thus benefiting both the creators and society (culturally, educationally and commercially).

Thus, national intellectual property laws are designed to promote societies by supporting the creation, dissemination, and protection of creative works of an informational, artistic, literary, entertainment, or technical nature. In theory, the society which creates more such works in relation to its population size will be better off than the society which supports the creation of fewer such works. By "better off" we mean a variety of things, including:

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* Portions of this section are taken from formal notes prepared by Dr. Dennis McDonald during the course of the project.

- providing information to support management of the society's organizations
- providing income for those involved in creating and disseminating such works
- promoting a quality of life which incorporates intellectual and artistic stimulation
- providing relaxation and entertainment
- providing income from sale and/or export of intellectual properties.

If we define these above items as "effects" of national laws which protect and promote the creation of creative works, then we are justified in saying that the legal and/or organizational methods which a society employs to carry out the personal and business transactions associated with the production, dissemination, and use of creative works should, directly or indirectly, stimulate or at least facilitate the creation of such works.

The notion of copyright did not appear automatically overnight, but resulted from a slow evolution, beginning in very early times. In ancient Greece and Rome, plagiarism was condemned as dishonorable and authors took issue with literary piracy as an encroachment on personal recognition and a threat to potential profits they might draw for their efforts.[2] Forms of copyright have also been found in connection with the songs and dances of various primitive societies, such as the Blackfoot Indians and Australian Aborigines, and has appeared in the manuscripts of ancient Jewish laws.[3] Although there is no agreement on the details of its early historical evolution, copyright is popularly linked with the widespread use of the printing press after its invention (or borrowing from the Chinese) by Johann Gutenberg during the fifteenth century. This invention marked a significant turning point in the importance of copyright with regard to the creation of literary works. In England, by the end of the sixteenth century, printing was growing into a powerful and lucrative industry, and the unauthorized printing and reprinting of literary works was also beginning to make an indelible mark. It was the businessmen -- publishers and booksellers -- who pressed Parliament for assistance and subsequently passed the first copyright legislation into law. This law, which dealt only with books, was the Copyright Act of 1709, more generally referred to as the Statute of Anne. In the U.S., the first national statutory protection was passed into law by an act of Congress in 1790.[4,5]

The basic concepts of both national and international copyright law developed during the second half of the 19th century. During that time the main means for disseminating copyright works was the sale of printed copies and "live" public performance. Over the years, however, the types of works protected by copyright have been extended to include hundreds of items, including computer software and other technologies, as has the scope of the protection afforded. In this century copyright has gained unprecedented importance. Just in the past two decades, new and powerful technologies have greatly modified our means of creating, transmitting and otherwise communicating information. Examples of such technologies are audiotape and videotape recorders, photocopying machines, satellite receiving antennas, pay-TV descramblers, and microcomputer disk drives. What these technologies have in common is that they all make it very easy to copy or reproduce a recorded work without the knowledge of the work's owner. The ease with which these works can be duplicated has put enormous pressure on copyright. Albums broadcast on the radio can be easily audiotaped. Movies broadcast on TV can be videotaped. Books and journals can be photocopied. Computer databases can be down-loaded and searched off-line. Computer software can be passed around and duplicated by all the members of a computer user group.

New communication technologies have led this country, as well as many other countries, into the so-called "information age." A recent survey suggests that in the U.S., material protected by copyright now accounts for approximately 2.8 percent of the gross national product. This implies that the economic effect of copyright is greater now than at any time previously in our history. Clearly, consideration must be given to the evolution of copyright statutes in response to the changing economic, social, and technological developments of present day.

4.2 Copyright Formalities — A Look at the Generic Functions and Their Operations Within the U.S. Copyright Office

From country to country, copyright laws have evolved in different directions using different wording and applying emphasis to different issues in response to varying national needs. It is clear though that whatever form the laws have taken, all are premised on the need for protection.

In some countries, such as the U.S., the acquisition and unqualified enjoyment of copyright rights have been conditioned upon various formalities or procedures such as registration, deposit, and copyright notices. In general, the laws of such countries now recognize that copyright protection arises at the moment of creation; however, many place conditions on this protection through the use of various formalities.

In some countries, such as the U.S., complying with certain formalities may be voluntary, but is a condition to obtaining the full range of legal protection for intellectual property. In others, protection is dependent on compulsory compliance with certain formalities. Still others, such as England and France, administer mandatory formalities for administrative purposes, totally unrelated to copyright protection. Typical among many countries is the requirement of mandatory deposit, usually instituted for the purpose of building and preserving the national archival collection.

For the purpose of this study, the copyright formalities of interest are registration, deposit, notice and recordation. During our study of the U.S. and foreign systems and in conversations with various intellectual property specialists, we uncovered a variety of real and potential functions and benefits associated with these formalities. Some of these functions and their benefits are discussed in this section from a general perspective and from the perspective of their operation within the U.S. Copyright Office.

Registration

Registration is the procedure whereby the basic facts of the existence and initial ownership of copyright are placed on public record. It is also the formality upon which requirements recordation of transfers of ownership are based, and it is a formality with which a deposit requirement is usually associated. The registration systems with which we are most concerned here are those which are connected with legal systems which define, limit, or protect intellectual property ownership rights.

In a generic sense, a registration system establishes a permanent file of records physically separate from the copies of original literary, artistic, or industrial works, which describes at a minimum the nature of the registered works, their owners or creators, and significant dates concerning creation, registration, or ownership. The word "permanent" is relative, of course, but the idea is that the file will be available for future use. For legal reasons, the file may need to exist so it is available as a possible source of evidence. Or the file may be maintained in order that it can also be used for literary, bibliographic or historical purposes.

Selection of a storage medium for a registration file may be based just as much on traditional practices as on the need to balance the minimization of storage costs with ease of access and, when appropriate, ease of updating. (This latter function is particularly important when ownership transfer, contracts, or licenses must be recorded.) The records of registration are usually separate from the item which is registered, and as such, a connection between the two must be provided, such as a unique accession number. Also included is a date, either the date of creation or the date of registration. Finally, if it is to be usable, the registration file must be organized in some fashion, either sequentially by date, sorted or organized by some other criterion, e.g., author, type of item registered, etc., or searchable via an index or catalog which is first examined to identify the presence or absence of a needed record.

To date, the U.S. Copyright Office has maintained a file of records which form a complete historical file, dating back to the first registration made at the Office in 1870,* and thus it includes certificates for works which are now in the public domain. The file consists of original certificates, each of which is recorded on paper. These certificates are organized sequentially by number within several separate categories, and are linked to catalog cards which are cross-indexed and searchable by author, title, and document accession number.

- As a public record of the facts of copyright ownership, a registration file can provide useful information to the public. Examples of use of the public information are: (1) searching the registration file before making a firm decision to register an item, or (2) checking to make sure the person from whom ownership or distribution rights will be purchased actually owns those rights. Full advantage of this benefit can only be taken if appropriate access systems are developed to provide access to the public.

Within the U.S. Copyright Office, this is accomplished through public access to registration files through the catalog card files, printed catalogs, and online access. Supplementary access is provided through the Copyright Office's Information and Reference Division. This division is responsible for maintaining a public information office for answering telephone and mail inquiries, responding to requests for publications and forms, and for providing assistance to visitors to the Copyright Office. Further, it conducts searches of Copyright Office records, assists the public in using records of the Copyright Office and maintains a file of bibliographic information on authors. It also furnishes additional certificates of registration and provides certified copies of the official records of the Copyright Office. This section also makes deposit copies and phonorecords available for inspection by members of the public.

- As a file of the facts of copyright ownership, a registration system makes it easier to prove the facts of ownership by recording the date of creation, publication and registration, and by forcing the registrant to specify who the creator and/or owner is during registration. (In some cases it may not be possible to prove the date of creation. However, the very existence of a registration form may, at the very least, offer minimal proof that the work did in fact exist at some particular point in time.)

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* The first registration was made in 1790, but the registration system was not part of the U.S. Copyright Office at that time.

In the U.S., the application form used for registration contains basic information describing the intellectual or artistic work. At a minimum, it records the title of the work, name of the author(s), year of creation, date and nation of first publication, name of the copyright claimant, name of any derivative work or compilation, and name and place of manufacturers.

Deposit

Deposit is both a formality in its own right (all works published with a copyright notice must be deposited in the Library of Congress) and an element of the registration formality. In this latter context, it is very closely related to registration. Deposit can vary in several ways. First, not all systems involving deposit require the deposit of an original copy. For example, in some intellectual property registration systems, a photograph in lieu of an original is sufficient. Second, not all deposit items need be retained permanently by the receiving agency. In the U.S., for example, distributors of some theatrical motion pictures elect to retrieve a deposited copy of a motion picture, at least on a temporary basis, in order to keep it in circulation during the early months of distribution when demand may be heavy. In terms of general benefits, deposit as well as registration may be a valuable means of proving creation and ownership. In the absence of a registration system, deposit alone may be useful in proving that a given work existed at a particular point in time. In the case of a published book, deposit may not be necessary since in the present day it is not difficult to prove publication. However, for unpublished works and works upon which has been affixed little or no information about the artist or depositor, such as music, sculpture, designs, etc., it becomes increasingly more difficult to prove ownership and date of creation or existence.[6]

In looking at the mechanics of registration, it is difficult to imagine the utility and operation of a registration system without an accompanying deposit. With deposit, we know that the registration mechanism is clearly enhanced. Deposit helps eliminate any doubt or question that a given work is or is not in fact the work claimed in the registration form. This can prevent confusion both at the time of the registration as well as later in case a dispute arises about ownership or the identity of the work.

Deposited works can also form the basis for a national cultural and historical archive. Simultaneously, it provides the groundwork for compiling a national bibliography. Deposit may also provide the means for collecting national publishing statistics.[7] While this function/benefit is not associated directly with the protection afforded by intellectual property law, it does emphasize the existence of benefits outside the normal scope of intellectual property protection.

It should be noted that retaining a deposited copy used in the registration process or retaining a copy for purposes of building and preserving the National Library Collection may have significant and different cost and benefit implications. One of the formidable cost implications of retaining deposits is that of storage and retrieval. This issue raises a number of pertinent questions. For example, what will be the costs of storing and retrieving deposited works? What types of materials will be stored? Will the deposit system be limited to printed materials? Should it include audiovisual materials --- films, sound recordings, and the like --- and other nonprint works? If audiovisual materials are included, will the existing National Archive or Library be equipped to handle this additional archival function? How long will deposited works be archived? Indefinitely? Should the collection be weeded? Will the system be automated or manually operated? Will the security of the works be guaranteed so that unauthorized copying or distribution is prevented? These are just a sampling of questions which must be addressed in order to assess the overall costs involved in creating and maintaining a deposit-based archival system.

If a registration system sets its registration fees to help recover the costs of storage, it may find that current registration fees must help cover costs for storing not only newly registered items but also a growing collection of older items. If on the other hand the cost of storing older items is not borne by current registration fees, then the cost must be borne by another source, or the items must be discarded. This latter action may prevent the deposited item itself from serving as evidence regarding the work which was registered.

The U.S. Copyright Office administers deposit systems for purposes of both copyright registration and for building the collections of the National Library of Congress. For registration purposes, deposit requirements vary in particular situations. Typically, registrations of a published work must be accompanied by two complete copies (or phonorecords) representing the entire work for which registration is to be made. Deposit of an unpublished work requires only one complete copy (or phonorecord), and identifying material, such as photographs or drawings, are accepted for works in three-dimensional form. A work may also be registered in unpublished form as a collection of works with one application and one fee. For example, fabric designs or swatches of several printed fabrics are frequently registered under one title, hence with one application and one fee.

Deposit for registration is provided for in Section 408 of U.S. code and is considered "voluntary" since it is only required at the time of registration. Deposit for the Library of Congress, however, is covered in Section 407 and is a mandatory requirement for certain published works and certain broadcasts and other transmission program materials. In general, works published with the copyright notice such as books, journals, maps, etc. must be deposited within three months of their first U.S. publication. Fabric designs and textiles, sculptured works, and many other forms of intellectual works are exempt from this requirement. Usually, published materials are submitted in duplicate; however, for motion pictures selected for deposit under Section 407, only one deposit is required. Many owners of works who must deposit under Section 407 also apply for registration and use the 407 deposit to meet their 408 registration deposit requirement, and thus avoid making two separate deposits.

Copyrighted materials that are stored and maintained by the Copyright Office date back to 1870. The Deposit Copies Storage Unit is located at the Landover Storage facility, where millions of deposits including books, records, films, commerical labels, prints, etc. are stored. The policy for retention of deposits was revised in 1984 to help combat space problems. Effective that date, published materials will be disposed of after five years with the exception of certain items in the visual arts category. Unpublished works will continue to be kept for life.

- Registration accompanied by deposit can prevent ineligible items from entering into the system. No matter how accurate or complete a registration record is in describing a work, it cannot be a perfect substitute for an original work, hence the need to rely upon a deposit system at least for an examination. One use of the examination is to screen out works which are not eligible to be covered by the particular intellectual property law system within which the registration process operates. For example, the work itself may be a type of literary or artistic work which is not protected in the country in which the registration system is located. Some national copyright laws, for example, are not specific regarding whether or not they cover computer software. Or, the work may incorrectly display a copyright or other intellectual property notice or may embody, intentionally or not, the protected literary or artistic work of others. Or the work might be of the type which is eligible for protection but which does not incorporate sufficient originality or creativity to make it eligible. An example of this would be the exclusion from registration (and possible protection) of artistic designs based on simple geometric patterns such as checks or stripes.

It is possible that a system of screening to address the question "is the work protected under law" would be easier and less expensive to operate than one which requires looking at the content to determine if it meets requirements for originality or novelty. An examination for content requires that the person doing the examining is qualified to make such decisions. Examinations of this sort are more expensive, time consuming, and error prone than a cursory examination to determine only that all technical requirements are carried out.

At the U.S. Copyright Office, registration forms together with deposit copies must pass through the examining division before a registration certificate may be issued. Materials are sent to one of four sections according to subject matter and are examined to determine whether the deposit contains at least a minimum amount of material subject to copyright protection, whether the work is eligible for protection in the U.S. and whether there has been compliance with the formalities of the U.S. copyright laws. The examiners reject or accept claims, and conduct correspondence with applicants if there are any problems to be resolved.

Examination of a motion picture requires from 10 to 60 minutes, depending upon the format (tape or print). The process may take up to an additional hour if correspondence is required. Fabric designs represent a large proportion of visual arts claims. Depending on the complexity of the design, examination of a fabric claim may require from several minutes to 30 minutes. The Copyright Office does not generally examine works for artistic merit or newness, nor (as misperceived by many individuals in the U.S.) does it "examine" works to determine if the work is in fact an "original" work (i.e., one created without substantially copying a pre-existing work).

Recordation

Recordation is the process whereby a public record is maintained of transfers of ownership and other documents pertaining to a copyright. While the U.S. Copyright Office does not supply special forms for this purpose, it is specific as to the particulars of the documentation which must be supplied. The general fee is $10 per document of six pages or less (for one title), plus $0.50 per additional page and per title. After the document is recorded it is returned to the sender with a certificate of recordation. Under U.S. statutes, recordation is not mandatory but, as with registration, carries practical and legal advantages.

Transfers of ownership are recorded when an individual sells one or more, or all, of his or her economic rights in an artistic or intellectual work. A nonexclusive license is recorded when, instead of transferring the ownership rights in a work, the owner merely sells or grants permission to the use of a work on a nonexclusive basis.

Copyright Notice

If we view the registration process as the creation of a file of records about registered works, we can also view the formality of copyright notice as also performing a "generic function" via-a-vis intellectual property. That function is public display of the ownership status of the work. It is a formality which requires little effort on the part of the author or subsequent owner, yet produces a high yield benefit -- that of showing the public that copyright is claimed in the work. On a national level, it gives the copyright owner some basis with which to claim that an infringer knew with forethought that he or she was making unauthorized use of a protected work. While there is general agreement about the function of the notice as providing a public display of the ownership in a work, we cannot find general agreement about what information is actually communicated by the notice itself. The notice appears to be imperfect in that it cannot be updated, nor can it present all the details of the owner's intentions for the work. For example, the owner's identity may have changed since the work was originally offered to the public; or the notice may not indicate if it covers all or only part of the work; it does not itself provide any information about the kind of uses the owner is willing to permit of the work; and so forth. Among copyright attorneys, the common denominator of agreed-upon meaning of the copyright notice appears to us to be "Be careful!" or "Watch out!". It seems to us that it gives users fair warning that the owner intends to invoke legal ownership claims if necessary.

Under U.S. law, the basic elements of the notice are the symbol © or word or abbreviation for "copyright", plus the owner's name and the date of publication.* In some countries, the copyright laws may contain other expressions such as "all rights reserved", plus the name of the owner, the publishers and/or printer, the date of first publication or the year in which the copyright was registered.

Of the four types of formalities observed in the U.S., the copyright notice is the most unique; its use or administration is the responsibility of the copyright owner and does not require registrationwith the Copyright Office, nor is it required in the case of unpublished works. However, as it will be pointed out in the following section, failure to use it and to affix it according to the required standards can result in loss of copyright as under the previous laws.

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* In the U.S., date of publication need not be included in the notice for useful articles such as fabrics or garments.

From a generic perspective, the formalities taken together support a set of potentially valuable functions with respect to intellectual property. That is, they provide a means by which the "facts" of ownership (who owns what) are created, stored, retrieved, and displayed. These functions are supported either by the existence of a copy of the work itself (i.e., the deposit copy in a collection) or by means of ownership surrogates or representations (i.e., the application form, the copyright notice, the recordation of transfer). These functions are defined below:

Creation	Initial recording of facts of ownership in some physical medium
Storage	Selection, organization, and/or retention of information concerning the facts of ownership
Retrieval	Obtaining the facts of ownership concerning a protected work
Use	Use of the facts of ownership in support of legal, economic, moral, or other activities

The formalities vis-a-vis the U.S. copyright law can be summarized as follows:

- published copies of works must bear a copyright notice;
- the publisher or producer of literature, films, phonorecords, and other specific works must deposit a copy with the Library of Congress; this is in itself independent of copyright protection;
- the rest of the formalities are voluntary; but
- certain advantages (e.g., claims in infringement suits) are aided through the appropriate use of registration, recordation or ownership transfer, and copyright notice.

Certain advantages which are conditional on the use of U.S. copyright formalities are the subject of the next section.

Copyright Formalities -- Advantages Derived from U.S. Copyright Law

Thus far, our discussions have focussed on a few of the real and hypothetical functions and benefits which are generic to the formality concepts. In this section, we will focus attention on certain advantages which we will refer to as "procedural" advantages which, as set forth in U.S. copyright laws, are conditional on the compliance with registration, recordation, and copyright notice. Thus, the advantages to be discussed here are neither intrinsic nor typical formality mechanisms; rather, they are derived from the national laws and court interpretations which govern the U.S. copyright system. Where possible, we will contrast the procedural benefits derived from U.S. Copyright law with those which exist in the legal systems (albeit unrelated to copyright law) of France and England.

There are three basic procedural benefits associated with the legal system of this country. As structured, the copyright system of the U.S. encourages the use of registration and recordation through the provision of benefits connected with (1) initiating infringement proceedings, (2) prima facie evidence, and (3) collecting statutory damages and attorneys fees.

- Initiating infringement proceedings -- In the U.S., registration is voluntary; however, in order for owners to invoke the protection of their rights, registrations must generally be made before the owners can bring a lawsuit. [This also applies to recordation of transfers of copyright ownership, i.e., an assignee cannot sue for infringement of copyright until the document effectuating the transfer of copyright ownership is also recorded with the Copyright Office.] Further, it is beneficial not only to register a work for the purposes of filing a lawsuit but also to register before such a need may arise. When an infringement of one's copyright occurs, it is important to have the capability to file promptly against the illegal activity. Registration made after the infringement is committed may take weeks to process, thereby causing the plaintiff to lose valuable time in seeking an immediate injunction against unauthorized activities.[8]

In France, deposit is also an optional formality under the French Design Law of 1909 (revised 1980). However, one cannot invoke the protection of this law unless the design has been deposited. Furthermore, if the deposit is made after an infringement is committed, the owner/ depositor is saddled with the task of proving that the defendant copied or imitated the work in "bad faith"; however, if the deposit is made before an infringement occurs, the burden is on the defendant to prove his "good faith".[9]

The British legal system on designs takes this requirement of "registration before litigation" one step further. Under the Registered Designs Act of 1949, one cannot, at any time, file suit for any infringement, regardless of proof, when that infringement has occurred before the date stamped on the registration certificate (in fact, proceedings cannot be initiated against an infringer even of a registered work unless the design, or the work bearing the design, is marked with the word "Registered" and the registration number).[10]

- Prima Facie Evidence -- In our field interviews in the U.S., motion picture and textile attorneys frequently cited the accessibility to prima facie evidence as one of the most important benefits associated with the U.S. registration formality. Under the U.S. code, if artistic or intellectual property such as a motion picture or fabric design is registered within five years from the date of first publication, the registration certificate is generally recognized by the courts as prima facie evidence of the validity of the copyright and of the facts proffered in the certificate. This means generally that the courts must accept the certificate as evidence of title to the disputed work[11], thus, placing on the defendant the burden of disproving the validity of ownership or facts given in the certificate. This is particularly beneficial to the creator and/or owner in that it may save him substantial time and expense, which otherwise might be necessary to prove the initial validity and ownership of the copyright. Such evidence may also lead to an expeditious resolution of the dispute. For registrations made after five years, the court is free to give the certificate any evidentiary weight it chooses.

The subject of costs connected with proving title without recourse to registration, and presenting such evidence in court, was a point of issue in the Whitford Committee's report to the British parliament. In their reports on Copyright and Designs Law, the Whitford[12] and Gregory Committees[13] both conceded that without registration, or some related documentation, "proof of title of copyright is often extremely difficult". The Whitford Committee further stated that in England, with the absence of the registration formality, defendants almost invariably create or contrive ownership disputes as a ploy to impede litigation proceedings. This is accomplished by forcing the plaintiff into the position of providing strict evidence of ownership of the work in question, even though the defense may have no doubt whatsoever as to validity of the plaintiff's claim to title.

- Statutory Damages and Remedies -- Under U.S. copyright law, the courts may award to the "prevailing party" certain specified statutory damages, reasonable attorney's fees, and court costs or some combination thereof. Eligibility, however, for statutory damages and attorney's fees is contingent not only upon registration but also upon its timeliness. According to statute, unless a work is registered before an infringement occurs, the copyright owner cannot recover such statutory damages. Generally, the owner has up to three months from the date of publication to register to qualify for such damages. If an infringement occurs during that period, the owner is still entitled to the full range of remedies. (Note: even though the "prevailing party" may be ineligible for receiving any statutory remedies, the courts can still issue an injunction against further infringement actions and may award the owner ordinary or actual damages).[14]

Similarly, for infringements involving published works, eligibility for the award of damages and other remedies, including injunctions, is contingent also on the use of copyright notice. Furthermore, failure to affix the copyright notice to published works may, in certain situations, result not only in the loss of recoverable damages, but also in the loss of copyright in the work itself.

4.3 Non-U.S. Systems

Protection of Intellectual Property vis-a-vis Berne and Design Law

In this study, functions supported by the formalities must be understood since it is the functions, not the formalities themselves, which form the basis from which comparisons are made among nations. The reason for this is very simple: nations differ as to the degree to which the formalities are present or absent. As stated by Kaplan,[15]

> "...we may conclude that the choice is not between an official system and no system of any sort, but rather a choice among a variety of systems involving varying costs differently distributed and attaining varying levels of efficiency."

The most obvious contrast to the American practice of requiring formalities (i.e., deposit, registration, notification, and recordation) for the extension of copyright protection is the collective practice of the members of the Berne Convention. It has been one of the basic principles of the Berne Convention since its revision of 1908 that copyright protection is given to foreign works in accordance with the provisions of the convention without the requirement of formality of any kind. Indeed, this prohibition of formalities within the Berne Convention has been and remains one of the primary impediments to U.S. adherence. The Universal Copyright Convention of 1952 has provided a bridge between countries such as the United States that require formalities and countries that do not. It does this by allowing non-formality countries (i.e., Berne Convention members) to obtain protection in formality states like the United States by simply placing the copyright symbol, the name of the copyright proprietor, and the year of first publication on the work in an obvious place. Foreign producers thus satisfy U.S. copyright requirements with much greater ease than may U.S. producers.

Most Commonwealth countries and many European states have required registration or deposit at various times in their history. However, these statutory or administrative requirements were not always tied to the issue of the presence or absence of copyright protection even though they may have allowed a plaintiff easier establishment of the facts of ownership and therefore greater probability of remedy. Statutory systems of non-voluntary formality even for reasons unrelated to the issue of extension of copyright protection have declined steadily since their elimination from British and Commonwealth practice in 1966-1967.

Thus, the existence of copyright for all Western European and many Eastern European, Middle Eastern, African and Latin American nations, depends upon circumstances relating to the creation or making of the work or other subject matter themselves and not to any formality required by law. However, this lack of requirement of formalities such as notice, registration, and deposit stands in marked constrast to the area of law governing the protection of industrial and applied designs. Unlike European copyright systems, design laws, which tend to be somewhat closer to patent law than of copyright law, usually involve systems of registration and/or deposit. Generally the use of these design systems is voluntary, although protection under design law is dependent upon registration or deposit.

In our study of England, France and Sweden, we observed features of design registration/deposit systems which were characteristically similar to as well as different from the U.S. copyright system. For example, in looking at the French system of design law, we learned that the deposit certificate holds the status of prima facie evidence in French courts, just as the copyright registration certificate does in U.S. courts. As with the U.S. system of registration, the date or timeliness of registration under French design law is also important. Under French design law, a design must be registered and made public before infringement proceedings can be started. Further, the outcome of an infringement case may also be affected; that is, if an infringement is committed before a work is registered, the plaintiff may not be entitled to collect certain statutory damages and attorney fees. One characteristic which clearly distinguishes the French system from the U.S. is that the deposit of a fabric design, for example, may optionally be made under seal, i.e., for secret storage. Another unique feature of the French deposit system which sets it apart not only from the U.S. but from England and Sweden as well is that there is no examination of the deposit articles, either sealed or made public. Nor does there appear to be any delay in the registration process -- the certificate of deposit is issued the same day the application is made.[16]

In studying England and Sweden, we observed that their registration and deposit systems involved a detailed examination process which rejects or accepts fabric designs and other designs based on whether or not they demonstrate sufficient "originality" or "novelty." Also, both systems refer to non-registered designs during the course of an examination to see if a design existed previously. This level of examination, of course, is not currently performed by the U.S. Copyright Office. In our examination of design law systems, we noted that the tension between copyright law and design law in Europe was such that it helped reveal much interesting and useful information relevant to copyright formalities, a discussion of which is found in an earlier report of this study entitled "A Discussion of the Relevance of European Copyright and Design Protection Systems to Copyright Formalities in the United States," April 1984.

It is clear that the trend in design law has been moving in the direction of establishing required systems of registration and deposit in order to obtain protection. In particular, it is apparent that Western European and Commonwealth countries have since the Second World War created design laws which provide limited forms of "copyright-like" protection for industrial and applied designs that are separate from but parallel to previously existing copyright statutes and conventions. However, there is considerable variation among the practices of advanced industrial countries with respect to the legal systems which may be invoked for protecting industrial or applied designs. That is, since the Second World War, various industrial states such as England, France, and Sweden have expanded their earlier copyright laws to extend copyright protection to include industrial and applied designs (including fabric designs), thus creating a situation whereby designs could be protected under two independent systems of law: copyright law and design law.

Great Britain extends limited copyright protection to a wide variety of industrial designs under the 1968 Copyright law if the design originated as a drawing. Designs unrelated to functional utility may also receive protection through registration under the Registered Designs Act of 1949, the Copyright Act of 1956 and the Design Copyright Act of 1968. In some cases articles may receive both traditional unregistered copyright protection and registered design protection.

Under the copyright law of March 11, 1957, France gives copyright protection to industrial designs the same as it gives to other works of art. This protection endures for the same duration as for any other intellectual works — life of the authors plus 50 years. Likewise, Sweden under the Law of 1960 extends copyright protection to works of applied art, as well as other artistic and literary works.

In England, the extension of traditional copyright protection to a wide range of industrial designs since the 1968 law has substantially reduced commercial use of registered designs protection. Only high-probability "winners" are registered with the design registry, partly to be able to take advantage of the possible deterrence value offered by possession of a registration certificate. In France, it is estimated that only a few hundred designs are registered per year by the textile industry. Possible reasons are (a) that the French tend to be less likely to initiate lawsuits than, say Americans; and (b) the prospect of obtaining prima facie evidence of ownership may not offer a significant attraction, given the availability of formality-free author's rights (copyright) protection. Of the approximately 3,000 design applications received per year by the Swedish patent office, only about five are for textiles. One of the reasons for this very low number is that, given that fabric designs are protected automatically under copyright law, the textile and clothing industries, desirous of minimizing expenses, pushed to have an abnormally high registration fee so as to deter usage of the registration system.

The international conventions provide comparative freedom to work out their own solution in relation to the protection of industrial designs. This is probably a reflection of the fact that most countries start from very different positions in the first place. Many advanced industrial countries provide protection only by means of a registration procedure. This tendency towards the use of formality in the industrial design area stands in marked contrast to the Berne Convention practice of allowing no formality with respect to traditional literary and artistic copyright subjects.

Non-U.S. "Formality-Like" Systems

Frequently, it is stated that the use of formalities by advanced industrial states with respect to traditional copyright is virtually non-existent in comparison with the U.S. However, as we stated earlier for purposes of this study, it is the functions, not the formalities themselves, which form the basis from which comparisons are made among nations. Many legal systems are relevant to the generation, storage and retrieval of information about creative works: contract law, international law, criminal and civil law, and the laws which are relevant to the monitoring and control of specific industries. All of these legal systems have organizations, customs, and paperwork which facilate their administration. It is this concept which made our European data collection so important. We have found for example, that European intellectual property markets are in no way "formality-free," notwithstanding the fact that legal copyright protection in European Copyright Systems is not dependent on the performance of formalities.

The essence of a "formality" associated with copyright protection is the element of compulsion or material incentive. The Berne Convention has successfully eliminated within the countries of the Berne Union the use of compulsive formalities going to the existence or exercise of copyright protection in a work protected under the Convention. But the Convention has not eliminated completely the existence of voluntary registration systems upon compliance with which certain useful, indeed valuable, benefits arise in connection with a work.

Within the framework of Berne Union, voluntary, registration systems, a clear pattern may be discerned centering benefits (incentives) upon acquisition of prima facie evidentiary effects. These effects may relate to proof of dates of creation, ownership, with respect to the calculation of terms of protection for anonymous or pseudonymous works, dates of publication, and similar matters.

We have found, however, several examples of systems which operate external to copyright law which are still considered important to the functioning of the marketplace for intellectual property goods and services, examples of which are:

1. The French System in which a government agency registers all motion picture contracts for domestically-produced films.

The Public Film Register operated under the Centre National de la Cinematographie, is a system of registration and deposit which provides information about the economic rights of all persons concerned with the financing, production, distribution, and exploitation of films made in France. It should be noted that the register is more than a single formality used to provide information for the public. It also helps to protect all parties with a vested interest in a film from third party opposition. Before a film, French or foreign, can be shown on French soil, it must be registered with the Registry. Registration of a French film involves depositing the title of the film with the Public Film Registry, together with a copy of the contract which the producer signed with the authors of the film, including authors of the pre-existing film or work on which the film is based. Interestingly, this contract between a film's producer and author is compulsory under the "Copyright" Law of March 11, 1957 which gives the producer authorization to produce the film, together with the author's terms and conditions. [With respect to foreign films, the distributor may prove "authorization" by affidavit or other documentation from the producer or copyright owners.][17,18,19]

It is important to note that contracts and other legal documents may not be registered until after the title of the film is registered. [Failure by the producer to register the title may subject him or her to legal damages.] Furthermore, unless the film title together with the respective agreements, acts and other documents pertaining to it are also registered, the rights embedded in those agreements are not enforceable against third parties.

Documentation pertaining to a film can be used in court to help prove ownership, as long as it has been registered and the film is not in the public domain. Fees are collected for the registration and deposit of every film, change of title, and documents pertaining to the film. Fees are also collected for every application for information and for every issue of statements, certificates, copies or extracts.

In the final analysis, we observe that this is a compulsory registration system for foreign as well as French films shown in France. And while registration is not a condition of copyright protection, the documentation it generates can be used as evidence in copyright litigation cases.

2. A private motion picture trade group in Sweden sets up a registration system in order to help combat "parallel importation" of videocassette distribution rights.

Major motion picture or videocassette distributors who fear both piracy and the dual purchase of "exclusive" distribution rights, have worked through an organization called IFPI-Video to set up a motion picture registration system. Operation of the registry will help identify and prevent instances where more than one distributor obtains videocassette distribution rights for the same movie. And since under Swedish law any document can be presented in court as evidence of copyright ownership, the registry by the major Swedish motion picture distributors, will prove useful in legal proceedings.

3. The British system in which a government agency registers all motion pictures for classifying British films and for operating a film levy to finance British films.

According to the Films Act of 1960, all films which are to be distributed and exhibited in Great Britain, be they British or foreign, must be registered with the British Department of Trade.[20] To exhibit them without registering them is illegal. All films must be registered by supplying information on two forms -- Form A which furnishes basic descriptive information (title, maker, nationality, etc.) and Form B which is a declaration that the film has been displayed in a trade show open to potential exhibitors. Form C which is completed only for British films contains detailed information relating to the film production and labor costs which must be verified by an accountant, auditor, or other qualified individual.[21] The maker of the film must also submit a Notorized Statutory Designation in verification of the information provided in this form. The registration fee for feature-length motion pictures is about 47 British pounds. Unlike the French Public Film Register, information about a film's production costs is not open to the public. While these registration processes by themselves cannot generally be used to serve as proof of ownership, they can be used to prove that a particular film existed and was registered on a certain date. While information about ownership rights of authors are not presently registered with the Board of Trade, submissions made to the Whitford Committee strongly supported establishing a register of films in order to more easily answer questions relating to ownership in films or any literary, dramatic, musical or artistic works embodied in a film.[22]

It is interesting to note that under the existing Copyright Act, the term of copyright protection is dependent, at least in part, on the date of registration. The date of registration is the date on the registration certificate issued by the British Department of Trade, and, as indicated above, registration with the Department is compulsory.

4. A private membership organization in France which operates a registry for its members' artistic designers

The Societe de la Propriete Artistique et Dessins et Modeles, SPADEM as it is known, is discussed here since it operates a registration and deposit system for its members which can be used for the registration of fabric designs and other designs. The organization itself is non-profit and is not connected with the French Government. It has two bases in French law for protection: copyright law and French design law. The basic service of relevance here is that its registration system serves as a method for proving the date of creation. It is generally viewed as a "middle course" of protection. Since an artist has no way of knowing if his or her design is going to be a success, and given that the artist is protected automatically under copyright law, the less expensive registration and deposit with SPADEM (less expensive than depositing with INPI, the government operated designs registry) will at least provide verification of the date of registration, a verification which is usually held up in court.[23] The system is not designed to be a public system, unless the depositor is willing to publicize the design. Also, the system does not screen incoming designs for originality or creativity.

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In a sense it can be said that virtually all copyright states have a system for establishing the facts of ownership with respect to protected works. Even though these systems are separate from the copyright law --- and in some cases outside the government --- one can justifiably say that they perform functions similar to those of copyright formalities insofar as copyright formalities have utility in addition to simply making works eligible for copyright protection. For example, recording transfer of ownership with the U.S. Copyright Office will help a subsequent potential purchaser or licensee locate the original owner. European systems which make such recordations necessary to facilitate such functions as import/export control, taxation, labor/employee relationships, or censorship, can also be used for similar purposes. However, it is clear that the practice among advanced industrial states varies enormously with respect to sophistication, formalization, and centralization with which they facilitate the recording, storage, retrieval, and use of the facts of ownership.

4.4 Comparability of Foreign and American Systems

There is a significant difference between the amount and type of information required by the film registration systems of France, Great Britain and the United States. The U.S. copyright system in initial registration or during recordation of transfer, requires virtually no detail concerning any financial background on the funding or production of the motion picture. In Great Britain, the registration system does not go into detail on ownership but does collect information about production costs and the nationality of the film's creators. The French system, on the other hand, collects significant amounts of details concerning the financing, production, and exhibition rights of French films. Both are compulsory registration systems for foreign produced as well as home produced films. While neither the British nor the French system can be characterized as a "copyright" system per se, their resemblance to Berne-forbidden formality systems is obvious. Yet they are established under legal systems which are separate from copyright. The fact that they resemble copyright formalities is incidental to the true function of these registration systems. Any industry regulatory or monitoring system which focusses on products or services having unique identities would have to incorporate details of the individual works whose production or exploitation are the focus of the system.

Because of the very significant differences among these systems, we do not feel that it is appropriate to compare the costs or even the operational efficiencies of the different countries' registration systems. On a per-motion-picture basis, however, it would appear that the person-hours devoted to creating and maintaining the French film registry is higher than that operated by Great Britain, which in turn may exceed the unit cost of operating the American system. The comparison difficulty comes not only from the obviously different functions of the three registration systems -- we would be comparing apples and oranges -- but also from the fact that the American system is part of an overall management structure -- the Library of Congress' U.S. Copyright Office -- which registers and maintains records for many types of copyrighted works.

Given the lack of comparability between the French and British and American motion picture registration systems, what can we learn that is relevant to the U.S. copyright formality system? First, we are struck by the simplicity of the American system. It minimizes its involvement in the financial and personnel details of motion picture production and distribution. This means that it collects and stores less information than the two European counterparts we are considering here. Aside from the fact that the British registration system does not incorporate a deposit requirement, the simplicity of the American system, coupled with possible economies of scale, is likely to be associated with more favorable cost per registered work. Again, however, we feel that attempting to compare a specific dollar figure for this comparison would be deceptive.

Second, this same simplicity of the American system may mean that its use is limited in comparison with its French and British counterparts. They function as instruments of national policies which are specifically designed to foster domestic motion picture production. They do this by channeling money and other incentives, based to a great extent upon theatre receipts, into the hands of domestic film producers. It can be argued --- quite successfully --- that the U.S. copyright registration system could not support such direct financial involvement without substantial overhaul and without substantial infusion of additional funds. Nor is it clear that U.S. motion picture producers and distributors would need or welcome such Federal involvement, even though the prospect of obtaining additional income might be attractive to them and sufficient to overcome their resistance to increased interaction with a Federal bureuacracy. Finally, it is not clear that a registration system is needed if the national goal is to support a domestic motion picture industry and its associated employment and balance-of-trade benefits. The administration of a registration system for individual motion pictures is not necessary, for example, to implement a system of loan guarantees, tax advantages, or even outright grants. In fact, during 1983, when our site visit was conducted at the British film registry, we were told that, due to a downturn in cinema attendance during the previous year, monies being collected from British cinema ticket sales were already going to the financing of British films via the British Film agency, meaning that relatively few funds were left over for distribution to individual film producers via the system supported by the registry's method for registering and classifying as "British" films those which employ 75 percent of British labor.

In summary, the U.S. copyright registration system is simpler and probably less expensive overall than its British and French counterparts. (Unfortunately it is difficult to make direct cost comparisons since the systems function so differently.) This simplicity appears related, however, not just to more efficient operation but also to less complex demands placed on the U.S. system due to its less direct involvement in the financial and management aspects of American film production, distribution, and exhibition.

Furthermore, the fact that the U.S. copyright registration system is so "lean" in comparison with the overall functioning of the British and French systems suggests that the U.S. system may be more flexible in its ability to adapt to changing market conditions brought about by changing media and communication technologies. The British and French registration systems are linked in design and operation and in law with the "traditional" public cinema market system. The U.S. system, on the other hand, concentrates on identifying the intellectual property and its owner/author, a function which is relatively unchanged by a shift in market shape to an increasing proportion from videocassette and videodisc sales. By being more flexible, costs for adaptation to changing markets and technologies are more likely to be incurred by the direct participants --- film consumers, producers, and distributors --- than by U.S. taxpayers as a whole.

Perhaps the greatest comparability issue which should be discussed is that textile designs in the European countries are protected under design law as well as copyright law. The legal underpinning of design protection is significantly different from copyright. What interests us most, of course, is that design protection is often associated with a registration system and sometimes with an examination and comparison against past designs. This, in fact, is a good way to classify intellectual property systems: (1) those without any registration system, (2) those with a registration system but without an examination, and (3) those with a registration system with an examination. But there is also another dimension that should be considered: the intended use of the system for

(1) the support of business or government regulation, (2) the support of legal proceedings, e.g., anti-piracy or infringement cases, or (3) both (1) and (2).

We have good examples of these different systems in the European ones we have studied, despite the important fact that design law, not copyright law, provides the basis for some of the systems studied. The difficulty comes in describing the benefits of the different systems in comparable terms given the very different functions of, say, a registration system based on patent-like law and a registration system designed to support government monitoring and regulation of motion picture contracts.

The basic differences between copyright and design law is not a new topic, of course. Nor is the very important legal question of which type of protection to seek. According to Jehoram,[24] a possible solution to the differences is to establish a form of copyright protection which is adapted to the needs of industry, instead of retaining separate copyright and design laws. According to Jehoram, "...one could think of introducing optional registration and publication of designs, and of a 25-year term of protection."

Interestingly, the system which probably comes closest to the ideal system suggested by Jehoram is that of the U.S. Copyright Office, given that it already has a registration system which will handle designs. What it lacks, of course, is an examination process which can give some evidence that a particular design has not been previously designed or registered, and a public notice of what designs have been registered.

4.5 Berne-Compatible System

Several alternative systems are theoretically possible between the extremes of maintaining the current U.S. system of copyright formalities and doing away with it completely. If the question we are asking is "how would the U.S. system operate if its system of formalities were to operate differently from the way they do now?", then the following alternatives to our "decision" can be generated:

Alternative 1.	Operate the U.S. system of copyright with the current system of formalities.
Alternative 2.	Operate the U.S. system of copyright without a system of formalities.
Alternative 3.	Operate the U.S. system of copyright "formalities" differently from the current system.

Based on our data collection from European systems we determined that it is probably unwise and invalid to draw a direct one-to-one comparison between European systems and the U.S. -- even where some systems performed functions similar to the U.S. Copyright Office, and for similar purposes, they were inherently different enough to make direct comparisons invalid. Further, given the various cultural, economic, and philosophical differences (particularly with respect to government regulatory practices), together with the comparatively larger scale of the U.S. motion picture and textile industries, and in view of the perceived higher costs for the same or lesser benefits attendant to the functions performed by these European formality-like systems, we were led to believe that the system which probably comes closest to the ideal system (at least insofar as the economic rights in intellectual works are protected in this country) is that of the U.S. Copyright Office. On this basis, in part, we concluded that for this pilot study we would not consider the alternative of operating the U.S. system utterly without formalities. This left two alternatives -- (1) operate the current system of formalities or (2) operate with formalities differently from the current system.

Given that the issue of our admittance to Berne has once again become a topic of ernest debate in economic and political circles, and that some of the more obvious impediments to our entry into Berne are certain formalities, we felt that it would be an interesting exercise to explore the hypothetical possibilities of operating the U.S. system of copyright formalities differently from the current system, such that it would help satisfy the requirements for Berne admittance. We recognize, of course, that there are perhaps a number of possibilities which would be compatible with the Berne Union. However, we have elected to take this approach because we also recognize that the current U.S. copyright system has developed a well-structured database and has evolved into a fine-tuned operation whose functions are unequaled, as we perceive them to be, when compared with formality-like systems in other countries. Finally, in undertaking a discussion of a "Berne-compatible" system, we would like to acknowledge that we are acutely aware of our lack of experience and expertise in this area.

Our discussion of the requirements for a Berne-compatible system will be guided by the following two assumptions:

- First, we assume that the U.S. Copyright Office will continue to play a major role in the management or implementation of copyright formalities. This does not mean, of course, that the national government is the only organization that could be involved in the formalities -- the affected industries and their representatives could also be responsible for implementing any kind of formality. [But even if portions of the national operation were to be contracted out, hypothetically speaking, we would still assume that decision making about formalities would be centralized at the national level.] Again, for purposes of this discussion, we will assume that the administration of the formalities and the internal operations of the Copyright Office would continue for the most part as is.

- Second, we assume that the system of formalities will be voluntary, in the sense that it will be up to the individual creator to determine the degree and manner in which he or she wishes to use the formalities. This does not mean there will be no legal or financial advantages to using the formalities -- one of our basic premises shall be that the system should offer inducements so that individuals will decide to become involved -- but it does mean that the government cannot unilaterally force individuals to participate.

According to the text of the current U.S. copyright law (revised 1976), ownership and the right to protection in an intellectual or artistic work is automatic at the moment of creation. However, although the use of U.S. copyright formalities is voluntary, the capability to invoke or access the full range of remedies attendant to copyright protection is conditional on the use of these formalities. The conditions attached to the formalities are set forth in U.S. copyright law. Acknowledging our legal and political naivete, we perceive that those aspects of the current system which would require "fixing" are the conditions embedded in the copyright statutes governing the formalities, not the formalities themselves, per se. On the next page we have identified the formalities and other factors whose conditions would be altered or removed so as to comply with Berne member ship requirements.

VARIATIONS OF FACTORS OVER THE ALTERNATIVES

Factor	Current System	Berne-Compatible
Copyright Notice (With Presumptions)	X	
Copyright Notice (Unconditional)		X
Registration (With Presumptions)	X	
Registration (Unconditional)		X
Prima Facie (Conditional and Keyed to Registration)	X	X
Recordation of Transfer (With Presumptions)	X	
Recordation of Transfer (Unconditional)		X
Mandatory Deposit (Not keyed to Copyright Protection)	X	X
Deposit (Keyed to Registration)	X	X
Deposit (Not Keyed to Registration)		
Statutory Damages (Conditional on Registration)	X	X
Statutory Damages (Conditional on Copyright Notice)	X	X
Attorneys Fees (Conditional on Registration)	X	
Attorneys Fees (Not Conditional on Registration)		X
Attorneys Fees (Conditional on Copyright Notice)	X	
Attorneys Fees (Not Conditional on Copyright Notice)		X
Infringement Suits (Conditional on Formality)	X	
Infringement Suits (Not Conditional on Formality)		X
Existence of Ownership Records Database	X	X
Regional International Protection (Berne Union)		X

Below, we have addressed each of the conditions attendant to the above factors, beginning with the formality of copyright notice.

- Copyright Notice -- Full protection of copyright in a work is conditional on this factor; that is, under the current system, the omission of a copyright notice on published works may in certain situations result in the loss of copyright in the work; even the "curative process" for omissions is effective only if registration took place within five years from the time of first publication of the work. Under a Berne-compatible system, this condition would be removed.

- Registration -- Enforcement is also conditional on this factor due to the stipulation that one cannot start litigation proceedings against an infringer unless registration of the infringed work has been made. This condition may require adjustment.

- Prima Facie Evidence -- As discussed earlier, the registration certificate may be submitted in court as prima facie evidence. In the hypothetical Berne system this advantage could be retained as an inducement to registration. As such the advantage itself would be conditional on the optional use of registration; but as stated above, registration would not be a condition of copyright protection.

- Recordation of Transfer -- The condition placed on this formality is similar to that placed on registration; one who owns one or more exclusive rights of copyright in a work may not sue for infringement until the document consummating the transfer of copyright ownership is recorded with the Copyright Office. This condition may require adjustment.

- Mandatory Deposit -- This formality is present in most advanced industrial countries including England, France and Sweden. In England, as in the U.S., this mandate is written, as it has always been, into the copyright law.

- Deposit (Keyed to Registration) -- This factor would continue to be a condition of registration, if used. To repeat, registration would not be a condition of copyright protection.

- Statutory Damages (Conditional on Registration)_ -- Sometimes it is difficult to establish or prove the amount of actual damages or the amount of an infringer's profits. Thus, under the current system, an option is written into the law which permits the courts to render an award of "statutory damages", an amount of which is generally fixed within a range of $100 to $50,000. This option, in lieu of seeking actual damages, may be invoked by the copyright owner at any time before a final judgement is made. However, the option to seek statutory damages carries with it certain conditions. For example, for a published work, the infringed work must have been registered before the infringement took place, unless such registration is made within three months after first publication. This portion of the law could be maintained under the same or similar conditions as an incentive to using the registration system. [It should be emphasized that the award of "regular" damages, including infringer's profits, injunction, and other similar remedies would not be conditional on the use of registration.]

- Statutory Damages (Conditional on Copyright Notice) -- When a notice has been omitted but the copyright has been "saved", the infringer may attempt to prove that he or she was misled by the omission. In such situations, the court may disallow an award of any damages, recovery of profits, or possibly even any injunctions against the infringing activity. In the hypothetical Berne system, conditions requiring copyright notice are eliminated. Thus, under the hypothetical system, the infringer would have to prove that he or she had "innocently infringed a copyright" by some means other than omission of notice. Still, with respect to the award of statutory damages it would seem that the same or similar conditions linking such an award to the use of registration could also be linked to the use of copyright notice. This condition, or perhaps some semblance thereof, might serve as an inducement to using the copyright notice. [Again, it must be noted that the award of "regular" damages and other remedies would not be conditional on use of the copyright notice.]

- Attorneys Fees (Not Conditional on Registration or Notice) -- As we understand it, the award of statutory damages in U.S. copyright litigation is an option which otherwise would not exist unless specially created by law. We, however, do not interpret the award of attorneys fees in this way since, traditionally, the courts under most legal systems have discretionary power to use such remedies (without pre-established conditions) in rendering their decisions. To repeat, we recognize our limitations in this area and, as such, we realize that we are perhaps attempting to "split legal hairs" with respect to this condition and other conditions discussed above.

- Existence of Ownership Records Database -- Growth and maintenance of the Copyright Office database would continue.

- Regional International Protection -- A Berne-compatible system would make intellectual and artistic works produced in the U.S. eligible for protection under the legal systems of countries which are Berne members.

We would conclude this section by re-emphasizing that all of the factors in the "Berne-compatible" system we have just described are purely hypothetical, and would require additional analysis by legal experts to discern their potential or plausible application, if any, in the real world operations of the legal and economic systems of the U.S. On the other hand, we would also reiterate that formality-like systems do exist in Berne countries, albeit they are not established in copyright laws. For example, we have witnessed in France the use of documentation which, although generated under contract law for a formality-like system, served as evidence of ownership in courts of law presiding over copyright litigation issues. In the final analysis, we are persuaded, based on our observations of the foreign systems, that the system of U.S. Copyright formalities could continue to function intact in a Berne environment provided that the conditions or presumptions contained in U.S. copyright law were modified and/or deleted, or else established under a different system of law, separate unto itself from copyright law.

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SECTION 5

QUANTITATIVE DESCRIPTION OF THE U.S. COPYRIGHT SYSTEM

5.1 Introduction

In this section we attempt to describe the U.S. copyright system in terms of quantities, costs and effects of processes performed. In particular, we examine the extent of input and output processing and costs of the U.S. Copyright Office. Processes studied in the Copyright Office include activities associated with recordation, registration and deposit. We also describe, for the motion picture and textile industries, the copyright infringement process and the use of copyright formalities. For the copyright infringement process we estimate the extent to which companies or law firms monitor for infringements, actions taken if a potential infringement is detected, number of disputes initiated and the outcomes of these disputes. We also estimate the resources expended in these activities. For use of copyright formalities, we estimate the extent of resources expended in copyright registration, recording of transfers of copyright ownership and other documents and use of copyright formalities in a non-litigation context. Finally, we describe the experience of the U.S. copyright community with foreign copyright activities.

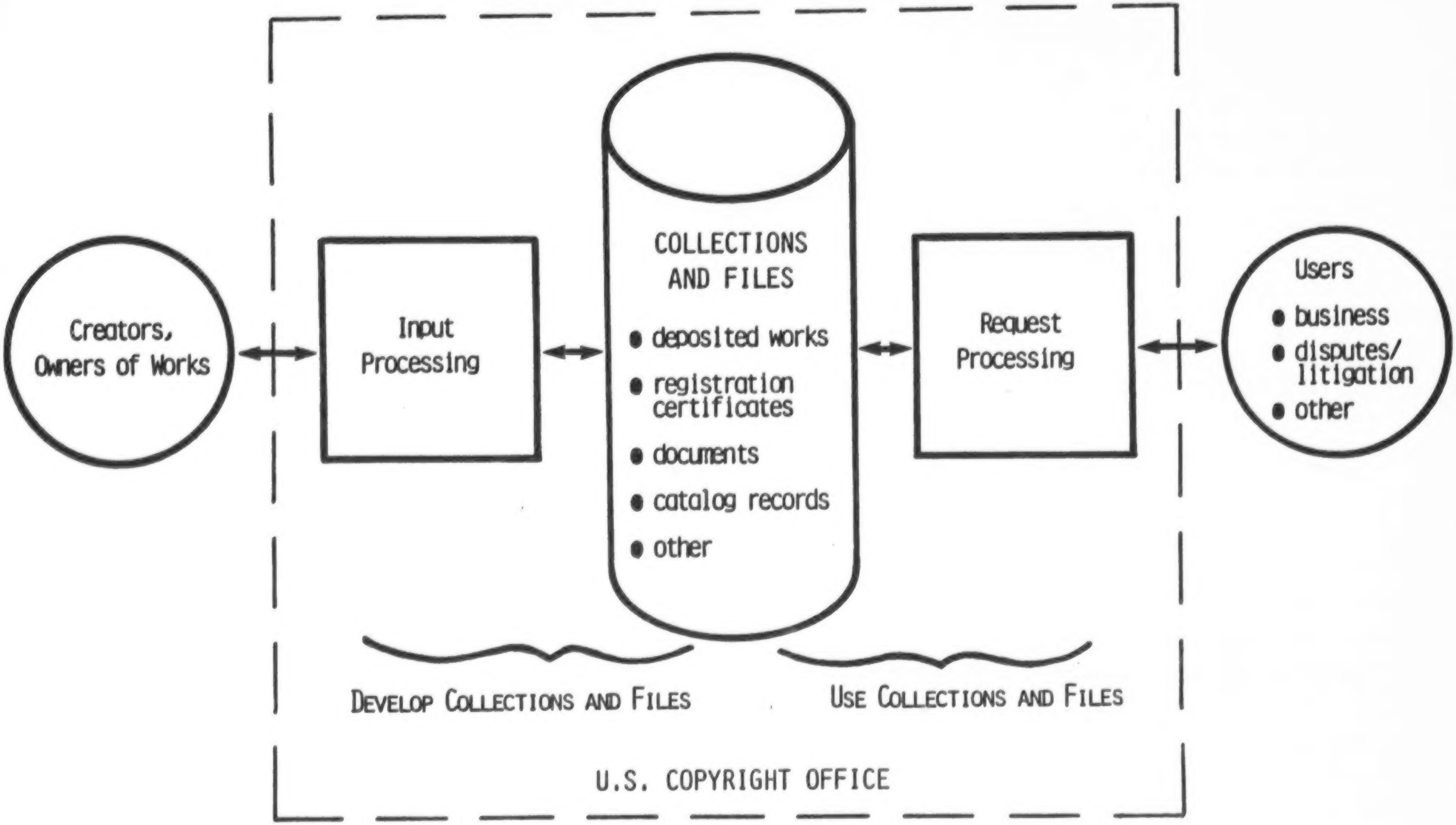
5.2 Quantitative Description of the U.S. Copyright Office

Figure 3 gives an overview of input, processing and output at the U.S. Copyright Office associated with copyright ownership records and deposited materials. At the left of Figure 3 are the creators and owners of works (or their agents) who remit to the U.S. Copyright Office either copies of their works for which copyright is claimed, or documents pertaining to copyright, and appropriate application forms, fees, and correspondence. These materials are the principal input of work concerned with the building of collections and files pertaining to U.S. Copyright.

The box entitled "Input Processing" involves deposited materials (i.e., copies of works) which are used to develop not only the deposit collections of books, serials, music, sound recordings, motion pictures, etc., for the U.S. Copyright Office, but also the archival collections of

FIGURE 3

OVERVIEW OF INPUT, PROCESSING AND OUTPUT AT U.S. COPYRIGHT OFFICE


Creators, Owners of Works
Input Processing
COLLECTIONS AND FILES
• deposited works
• registration certificates
• documents
• catalog records
• other
Request Processing
Users
• business
• disputes/ litigation
• other
DEVELOP COLLECTIONS AND FILES
USE COLLECTIONS AND FILES
U.S. COPYRIGHT OFFICE

the Library of Congress. In addition, the files of copyright ownership records are also developed during the Input Processing activity. These files include copyright registration certificates, documents that pertain to a copyright, and catalog records that facilitate access to these certificates and documents.

Input processing is carried out by:

1. the Acquisition and Processing Division which opens, sorts, checks, routes and tracks the incoming materials, and performs the associated funds accounting;
2. the Examining Division which examines whether or not remitted works are copyrightable, and corresponds with the remitters to resolve issues associated with copyright claims;
3. the Cataloging Division which prepares catalog records for both copyright registrations and documents pertaining to copyright; and
4. the Information and Reference Division which maintains the collections and files of the U.S. Copyright Office, and adds suitable new materials and records to them.

Users of the collections and files of the U.S. Copyright Office are shown on the right hand side of Figure 3. They have a variety of needs that are translated into requests for both materials and information contained in the collections and files. For example, a user may ask questions such as: What is the copyright status of a particular work? Is it in the public domain? How much longer will copyright protection for a particular work be in effect? Who is the owner of a particular work? Or they may request copies of registration certificates or recordations of documents in support of disputes and lawsuits.

The output or processing of these requests is represented by the box entitled "Request Processing" in Figure 3. This activity is handled by certain facilities and services of the Information and Reference Division, particularly the Reference and Bibliography Section and the Certification and Documents Section. Other functions of the Information and Reference Division not depicted in Figure 3 are:

1. to provide copyright application forms and related materials to assist creators of works and owners of rights in registration of their works and in recordation of documents pertaining to copyright of these works;

2. to inform the public concerning copyright laws and related policies, procedures and regulations by means of announcements, circulars, letters, videotapes, etc.; and
3. to respond to requests involving the Freedom of Information and Privacy Acts.

Activities Associated With Registration and Deposit

Creators of works may claim copyright registrations for their works by sending three things to the U.S. Copyright Office:

1. a completed copyright application form,
2. two copies of the materials in which copyright is claimed (with some exceptions), and
3. a $10 filing fee, either in cash or through a deposit account.

Such persons are called remitters.

When claims for copyright are received by the Copyright Office, they are checked for completeness (in the Acquisitions Processing Division) and examined for validity (in the Examining Division). If the claim is valid, the application is assigned a registration number and is used to produce a registration certificate, a copy of which is sent to the remitter. The registered work and application are next sent to the Cataloging Division, where catalog records identifying and describing the work are prepared, and then sent to the Information and Reference Division, where the copyright deposit materials are stored, maintained and made accessible.

Activities Associated With Recordation

After a work has been created, its ownership may be transferred (e.g., through sale or inheritance) and documents associated with this transfer may be sent to the Copyright Office for recordation. The Copyright Office will record any document pertaining to a copyright. Copyright Office Circular R12 states:

> A document is considered to "pertain to a copyright" if it has a direct or indirect relationship to the existence, scope, duration, or identification of a copyright or to the ownership, division,

allocation, licensing, transfer, or exercise of rights under a copyright. That relationship may be past, present, future or potential.

Documents received by the Copyright Office for recordation include the following:

Assignments (transfer)
Exclusive and non-exclusive licenses
Contracts
Mortgages
Powers of attorney
Certificates of change of corporate title or corporate name
Wills
Decrees of distribution
Abandonments of copyright
Affidavits
Documents identifying the true copyright owner
Notices of termination.

The Copyright Office will record such documents provided that they meet certain conditions, including payments of an appropriate fee. Figure 4 reveals the various conditions for which a claim for recordation may be denied.

Transaction Volumes for Fiscal Year 1984

Table 1 gives the approximate number of transactions for the principal activities (related to Figure 3) performed at the U.S. Copyright Office during FY 1984. The input processing activities reveal that approximately 503,000 registration/deposits and 12,000 recordations were processed during FY 1984. Other transactions related to registration/deposits are not equal to the number of registration/deposits (503,000) because:

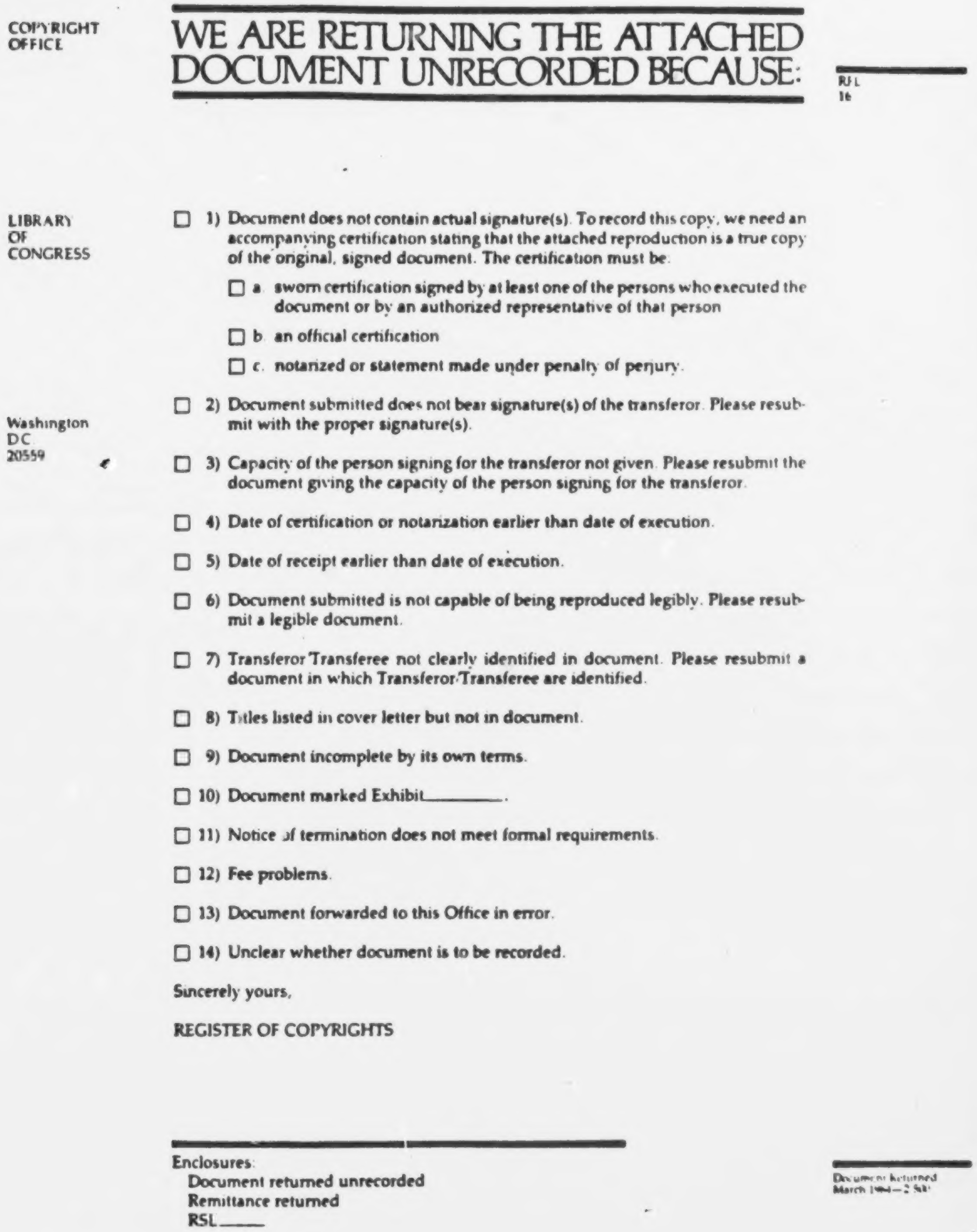
1. some of the claims do not result in registration (they may be rejected, or fail to complete the required registration procedures), and

2. the internal backlogs at various work-stations throughout the Copyright Office fluctuate with time, causing imbalances in the number of transactions performed during any period of time.

The output or request processing activities reveal that approximately 360,000 requests were processed during FY 1984. About 300,000 of these

FIGURE 4

FORM USED FOR DENYING CLAIMS FOR RECORDATION OF DOCUMENTS



COPYRIGHT
OFFICE

LIBRARY
OF
CONGRESS

Washington
DC
20559

WE ARE RETURNING THE ATTACHED DOCUMENT UNRECORDED BECAUSE:

RFL
16

☐ 1) Document does not contain actual signature(s). To record this copy, we need an accompanying certification stating that the attached reproduction is a true copy of the original, signed document. The certification must be:

  ☐ a. sworn certification signed by at least one of the persons who executed the document or by an authorized representative of that person

  ☐ b. an official certification

  ☐ c. notarized or statement made under penalty of perjury.

☐ 2) Document submitted does not bear signature(s) of the transferor. Please resubmit with the proper signature(s).

☐ 3) Capacity of the person signing for the transferor not given. Please resubmit the document giving the capacity of the person signing for the transferor.

☐ 4) Date of certification or notarization earlier than date of execution.

☐ 5) Date of receipt earlier than date of execution.

☐ 6) Document submitted is not capable of being reproduced legibly. Please resubmit a legible document.

☐ 7) Transferor/Transferee not clearly identified in document. Please resubmit a document in which Transferor/Transferee are identified.

☐ 8) Titles listed in cover letter but not in document.

☐ 9) Document incomplete by its own terms.

☐ 10) Document marked Exhibit________.

☐ 11) Notice of termination does not meet formal requirements.

☐ 12) Fee problems.

☐ 13) Document forwarded to this Office in error.

☐ 14) Unclear whether document is to be recorded.

Sincerely yours,

REGISTER OF COPYRIGHTS

Enclosures:
Document returned unrecorded
Remittance returned
RSL_____

Document Returned
March 1984—2,500

TABLE 1

NUMBER OF TRANSACTIONS PERFORMED IN THE U.S. COPYRIGHT OFFICE BY ORGANIZATIONAL UNIT AND FOR PRINCIPAL ACTIVITIES: FY 1984

Organizational Unit	Activity	Number of Transactions
	INPUT PROCESSING	
Acquisition & Processing Division	Claims Received	520,000
Examining Division	Items of Work Completed	525,000
Cataloging Division	Items Cataloged	500,000
Documentation Unit of the Cataloging Division	Documents Recorded	12,000
Certificate Production Unit of A&P Division	Registration Certificates Produced	503,000
Records Management Division	Registration Certificates Stored	503,000
Deposit Copies Storage Unit of the Acquisitions & Processing Division	Deposit Copies stored	450,000
	REQUEST PROCESSING	
Public Office of the Information & & Reference Division	Requests Processed	344,000[a]
Publication Section of the Information & Reference Division	Copies of Publications Disseminated	3,120,000[b]
Reference & Bibliography Section of the Information & Reference Division	Searches Performed	8,000
	Titles Reported	136,000
Certification & Documents Section of the Information & Reference Division	Requests Processed	15,000[c]
	Searches Performed	2,100
	Certificate Produced	9,800

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[a] This consists of 206,000 letters, 125,000 telephone calls, and 13,000 visitors

[b] More than 90 percent of these documents are application forms; the balance consists of circulars, agreement forms, inter-office forms and kits.

[c] This consists of 5,000 letters, 7,000 telephone calls and 3,000 visitors

were for copyright application forms and information concerning copyright law and related policies, procedures, and regulations. More than three million copies of publications were disseminated to the public in response to these requests. The remaining requests were for information and materials contained in collections and files of the Copyright Office. These resulted in approximately 10,000 searches, reports on 136,000 titles, and 9,800 certificates being produced.

Transaction Volumes for Motion Pictures and Textiles

Although current operational records are not kept by categories as detailed as Theatrical Motion Pictures and Fabric Designs, records for Motion Pictures and Commercial Prints and Labels are available for items cataloged for the fiscal years 1980 through 1982; see Table 2. From this table it can be shown that during the period FY 1980 to FY 1983:

1. Motion Pictures and Filmstrips accounted for between 5.4 and 6.2 percent of the works of performing arts.
2. Commercial Prints and Labels accounted for between 11.5 and 16.8 percent of the works of the visual arts.

These results are consistent with the following assumptions:

1. Registrations of Motion Pictures account for approximately six percent of the registrations of works of the Performing Arts in any fiscal year.
2. Registrations of Commercial Prints and Labels account for approximately 15 percent of the registration of works of the visual arts.

Table 3 shows the number of registration rounded to the closest thousand by major category for FY 1984 and the corresponding percentages.

Applying the proportions given in the assumptions above to the number of registrations in Table 4 for the performing arts and the visual arts categories yields the following estimates:

Motion Picture Registations, FY 1984 ---------------- 8,400
Commercial Prints and Labels Registrations, FY 1984 -- 6,450

TABLE 2

NUMBER OF REGISTRATIONS (U.S. COPYRIGHT OFFICE) BY TYPE OF WORKS: FY 1980-1984

	FY 1980	FY 1981	FY 1982	FY 1983	FY 1984
Nondramatic Literary Works					
Monographs	119,221	119,098	116,316	129,260	
Serials	117,898	118,523	112,430	106,135	
Machine-readable works	1,852	2,088	2,671	5,966	
Total	238,971	239,709	231,417	241,361	260,779
Works of the Performing Arts					
Musical works	120,198	125,018	125,471	127,797	
Dramatic works, including any accompanying music	8,042	8,825	8,700	9,531	
Choreography and pantomimes	63	98	132	107	
Motion pictures and filmstrips	8,475	7,841	7,617	9,119	
Total	136,778	141,782	141,920	146,554	140,186
Works of the Visual Arts					
Two-dimensional works of fine and graphic art, including prints and art reproductions	16,227	15,181	21,430		
Sculptural works	2,953	2,527	1,959		
Technical drawings and models	834	669	663		
Photographs	1,247	1,297	789	37,411	
Cartographic works	825	908	539		
Commercial prints and labels	4,722	6,702	5,699		
Works of applied art	14,345	12,510	11,209		
Total	41,153	39,794	42,288	37,411	42,795
Sound Recordings	12,788	13,498	13,878	21,749	21,587
Renewals	32,982	34,243	36,332	39,092	37,281
TOTAL ALL REGISTRATIONS	464,743	471,178	468,149	488,256	502,628

TABLE 3

TOTAL NUMBER OF REGISTRATIONS (U.S. COPYRIGHT OFFICE) BY MAJOR TYPE OF WORKS: FY 1984

Major Category	Number of Registrations	Proportion (%)
Non-Dramatic Literary Works	261,000	52
Works of the Performing Arts	140,000	28
Works of the Visual Arts	43,000	9
Sound Recordings	22,000	4
Renewals	37,000	7
All Registrations	503,000	100

TABLE 4

COSTS OF ACTIVITIES ASSOCIATED WITH REGISTRATION AND DEPOSIT AT THE U.S. COPYRIGHT OFFICE BY ORGANIZATIONAL UNIT AND FOR PRINCIPAL ACTIVITIES: FY 1984

Organizational Unit	Activity	Cost[a]	Cost/Registration[b]
	INPUT PROCESSING		
1. Acquisition and Processing Division	Receive and process claims	$ 2,855,000[c]	$ 5.67
2. Examining Division	Examine works	$ 5,321,000	10.58
3. Certificate Production Unit, RM Div.	Produce Registration Certificate	$ 100,000	.20
	Process claim and issue certificate	$ 8,276,000	16.45
4. Cataloging Division	Catalog registered work	$ 3,217,000	6.40
5. Records Management Division	File and maintain records and deposits	$ 619,000[d]	1.23
6. Deposit and Acquisitions Section, A&P Div.	Review and file deposit claims	$ 735,000	1.46
	Prepare public records	$ 4,571,000	9.09
	REQUEST PROCESSING		
7. Information and Reference Division, Public Office/Publications Sections	Respond to requests and disseminate publications	$ 1,471,000[e]	2.92
		$ 14,318,000	$ 28.46

a. Costs include: salaries, fringe benefits (11.8% of salaries) overhead (10% of salaries), and non-personnel costs of $3,000 per employee; excluded are costs of space and Automated System Office charges.

b. Based on 503,000 registrations for all activities.
c. Excludes D&A Costs.
d. Excludes CPU Costs.
e. Excludes Costs of Reference & Bibliography Section and Certification & Documents Section.

These estimates indicate that motion picture registrations account for only or 1.7 percent of the total number of registrations and commercial prints and labels account for only 1.3 percent of the total number of registrations.

The Public Information Office of the Information Reference Division estimates similar proportions for requests concerning motion pictures and fabrics. They estimated that of the total requests received, one to two percent are concerned with motion pictures, and one percent are concerned with fabric designs. These proportions are also in accord with rough estimates made by the Publication Section of the Information and Reference Division.

In contrast to these proportions, the Reference and Bibliography Section of the Information and Reference Division estimate that approximately 6.5 percent of their total searches deal with motion pictures, while only 0.1 percent deal with fabric designs.

The above results suggest two things:

1. that the bulk of the work performed by the Public Information Office and the Publication Section of the I&R Division is related to the Registration Process, and
2. that the usage of Copyright Office records varies greatly from industry to industry, and bears little relation to the number of registrations in that industry. (Motion picture records are heavily used; fabric design records are lightly used.)

Costs Associated With Registration and Deposit

Costs of performing key activities associated with the formalities of registration and deposit are given in Table 4. These costs are ordered to correspond to the activities of Figure 3. The next three activities are required to create an accessible public record of the copyrighted works. The final activity deals with making the public aware of the policies and procedures concerning registration and deposit, and disseminating appropriate forms, instructions, circulars, etc. to the public.

The costs presented in Table 4 include the costs of salaries, fringe benefits (11.8% of salary), overhead (10% of salary) and non-personel costs ($3,000 per employee). These costs do not include the costs of space, and charges made by the Automated Systems Office. Whether or not to include space costs is a philosophical point. On the one hand, the Madison Building, which houses the Copyright Office, is owned by the government and no rent is now being charged for the space of the Copyright Office. On the other hand, the Copyright Office activities listed in Table 4 use more than 156,000 square feet of space in an area where annual rental costs are approximately $20 per square foot. Rental costs for this space, therefore, would exceed three million dollars per year.

Adjacent to the column presenting the costs in Table 4 are the unit costs per registration of the various activities, under the assumption that each of the costs is associated with 503,000 registrations for FY 1984. The average cost of issuing a copyright registration certificate (the sum of activities 1, 2 and 5) is $16.45. An additional cost of $9.09 is required to prepare appropriate public records for a copyrighted work (i.e., the sum of activities 4, 5 and 6), and $2.92 is required to make the public aware of copyright policies and procedures, and to supply the public with required forms, circulars, etc. to facilitate their obtaining a registration certificate. To perform all of the above activities requires an average cost of $28.46 per registration.

Under the simplifying assumption that the unit costs of registration and deposit are, on the average approximately the same for all classes of works, we can estimate the total costs of motion pictures and fabric designs by multiplying the unit costs of Table 4 by the number of registrations estimated previously. Table 5 gives the results of this computation.

TABLE 5

ESTIMATED COSTS AT THE U.S. COPYRIGHT OFFICE OF REGISTRATION AND DEPOSIT FOR MOTION PICTURES AND FABRIC DESIGNS: FY 1984

Industry	Number of Registrations	Unit Cost	Total Cost
Motion Pictures	8,400	$28.46	$ 239,000
Fabric Designs	6,450	$28.46	$ 184,000

A cost incurred by the Copyright Office not included in Table 4 and 5 is that of operating the two sections of the Information and Reference Division that deal with searches not directly related to the registration and deposit formalities. They are the Reference and Bibliographic Section and the Certificate and Documentation Section. These sections are concerned primarily with using the public record as opposed to creating it. The FY 1984 costs of these two sections is approximately $729,000. From Table 1 we see that in FY 1984 these sections performed more than 10,000 searches, reported on 136,000 titles, and produced 9,800 certificates.

Costs of Recordation

Costs of recordation of documents pertaining to copyright are smaller than the costs of registration and deposit. As can be seen from Table 1, only 12,000 recordations were made during FY 1984, which is about 2.4 percent of the total number of registrations. Under the same set of assumptions used to develop Table 4 the cost of performing these recordations is estimated to be $200,000. This yields a unit cost per recordation of $16.67.

As indicated previously, motion pictures account for approximately 1.7 percent and fabric designs account for approximately 1.3 percent of the total number of registrations. If these proportions are roughly the same for the number of recordations and the unit costs of recordation is on the average the same for all classes of works, then the annual cost of motion picture recordations would be only $3,400 and the annual cost of fabric design recordations would be only $2,600. Although it is likely that motion picture recordations account for a considerably higher proportion than 1.7 percent, the resultant cost would nevertheless be small.

Revenue and Value

As a result of the registration, deposit and recordation processes, the Copyright Office collects revenue through the registration application fees and other fees, and the Library of Congress receives valuable materials for its various collections. Table 6 presents an estimate of value of the various kinds of materials transferred to the Library of Congress' collections. The total estimated value of items transferred is

TABLE 6

ESTIMATED INCOME AND VALUE OF THE U.S. COPYRIGHT OFFICE, BY TYPE OF WORKS: FY 1984

Income: Fiscal 1984

Estimated value of materials transferred to the Library of Congress:

	Items Accompanying Copyright Registration	Items Submitted for Deposit Only	Total Items Transferred	Average Unit Price	Total Value of Items Transferred
Books	85,350	9,637	94,987	$17.20	$1,633,776
Books, Periodicals, E&G..........	48,711	55,368	104,079	2.27	236,259
Periodicals	193,126	169,993	363,119	3.43	1,245,498
Motion Pictures	7,312	616	7,928	480.00	3,805,440
Music	43,560	197	43,757	19.00	831,383
Sound Recordings	6,184	925	7,109	12.60	89,573
Maps	660	1,242	1,902	20.20	38,420
Prints, Pictures, and Works of Art	39	179	218	12.10	2,637
Total	384,942	238,157	623,099		$7,882,986

Total estimated value of materials transferred to the Library of Congress	$ 7,882,986
Fees transferred to the appropriation	5,200,000
Fees transferred to Miscellaneous Receipts	180,500
Fees transferred to Miscellaneous Receipts for annual cost of Licensing Division	680,600
TOTAL INCOME	$13,944,086

Obligations: Fiscal 1984

Salaries	$14,277,506
Other Obligations	1,932,871
TOTAL OBLIGATIONS	$16,210,377

RATIO of total income to obligations 86%

about $7.9 million. Notice that the estimated value of motion pictures is more than $3.8 million, and accounts for 48.3 percent of the total value; this is a disproportionately high proportion since motion pictures account for only 1.7 percent of the registrations. Fabric designs, which account for 1.3 percent of the registrations, are not collected by the Library of Congress.

Also shown in Table 6 are the revenues derived from fees. The principal revenue is derived from the fees that accompany the registrations applications; the 520,000 applications, each with a fee of $10 yields revenue of $5.2 million. Thus, the U.S. Copyright Office is estimated to collect about $148,500 for registration of motion pictures and fabric designs.

Copyright Registration by Motion Picture and Textile Companies

About three-fourths of law firms and motion picture and textile companies have been involved in the initial registration of claims to copyright works authored, produced, or published by the companies or by someone else. Of law firms, motion picture companies and textile companies, it is found that 78 percent of the law firms have engaged in this activity, 74 percent of the motion picture companies, and 53 percent of the textile companies. It seems that law firms serving the textile industry assume this responsibility since 96 percent of them have been involved in the initial registration of claims to copyright in works. Of the total works authored, produced, or published by the companies (or their subsidiaries), about 50 percent are covered by registration certificates. This proportion also holds for motion picture companies, but it is higher (70 percent) for textile firms.

The number of registrations per year for motion picture related works is estimated from the survey to be about 6,330 and for fabric design works about 9,490 registrations. These totals sub-divide by type of work as follows:

Feature-length motion pictures	3,140
Work associated with the creation or production of feature-length motion pictures	640

Work derived from a feature-length motion picture	2,550
An artistic design	3,540
A finished textile article	5,950

It is noted that the two estimates of registrations from both industries are almost identical (14,850 by using 1.7 times the total registrations and 15,820 from the survey). However, there is a disparity in the estimates for the motion picture industry (8,400 versus 6,330) and the textile industry (6,450 versus 9,490). It is not known whether assumptions about the Copyright Office registrations, survey estimates or both are wrong.

More than one-half (53 percent) of the copyright registrations were done on behalf of someone else. These obviously involve the law firms and were found to be about the same for both the motion picture and textile works. A significant amount of time is spent on registering copyrightable works: an average of 4.0 hours of senior lawyer, executive or equivalent time and 2.2 hours of other personnel time. The total hours spent in registering comes to 63,300 hours of senior time and 34,600 hours of other time (using the survey estimates). The average amount of time spent with registering motion picture works was substantially greater than with textile design works. The registration was rarely made (10 percent) primarily in order to initiate an infringement suit against a known or suspected infringer. For textile works this was done more frequently than for motion picture works (21 percent vs. 11 percent). This was expected since the practice of many textile firms is to register only when litigation is required, whereas it is very unusual that a motion picture would not be registered. Sometimes organizations pay other persons or organizations to perform part or all of the work associated with the registration of a work. Approximately 15 percent of the motion pictures and textile registrations involved such payments for a total of $270,000. On the other hand, most of the law firms were paid to perform the work associated with registration at an average rate of about $130 or $250,000 all told.

Recording Transfers of Copyright Ownership and Other Documents

One formality of the Copyright system in the U.S. deals with recording transfers of copyright ownership and other documents with the U.S. Copyright Office. Of the respondents to the survey, 38 percent indicated that they had been involved in recording transfers of copyright ownership or other documents with the U.S. Copyright Office. Both law firms and motion picture companies appear to be about that involved in recordation (43% apiece), but textile companies rarely are (6%). Since the life of design works is relatively brief, one would not expect many transfers. The total number of transfers of motion picture works is about 2,980. The transfers of feature-length motion pictures dominate — 2,070 -- with works associated with the creation or production of a feature-length motion picture being 630 and the remainder at 280 for works derived from feature-length motion pictures. The total number of titles transferred is 2,060 with the ratio of titles to transfers being about equal for the three types of motion picture works. For the few textile firms that have been engaged in transfers in the past year, there are about 140 transfers for all artistic designs intended to be printed on, or knitted or woven into cloth for textile goods and 180 for all finished textile articles on which an artistic design appeared.

Most of the transfers of motion picture and textile design works are done on behalf of someone else, largely because so many of them are done by law firms. The average amount of time devoted to recording the ownership transfer or other documents of the work was 4.9 hours of senior lawyer, executive or equivalent persons and 1.6 hours of other personnel.

5.3 Quantitative Description of the U.S. Copyright Community

The U.S. copyright community, external to the U.S. Copyright Office, consists of creators of intellectual property; the legal community found in law firms and companies involved in creation and processing copyrightable works; the judicial system; and readers, viewers or users of the works. The survey, described in Section 3, focussed on those persons or organizations who are directly concerned with the legal aspects of copyright formalities. For the most part, it did not include the creators themselves or the end beneficiaries of the works. There was a total of 233 organizations or persons who responded to the survey. From the survey responses it is estimated that there is a total of 711 organizations engaged in a core copyright community as concerned with motion pictures and fabric designs. The types of organizations and their number are summarized in Table 7 below.

TABLE 7

NUMBER OF SURVEY RESPONDENTS AND ESTIMATED NUMBER OF ORGANIZATIONS
OR INDIVIDUALS IN THE SURVEY POPULATION BY TYPE OF
ORGANIZATION OR INDIVIDUAL: 1984/85

Type of Organization or Individuals	No. of Respondents	Estimated No. in Population
Law firms or individual lawyers in private practice	125	299
For-profit organizations associated with production and/or distribution of feature-length motion pictures	27	157
For-profit organizations associated with the manufacture, distribution, or sale of textile piece goods, apparel, fabrics, clothing or other textile-related products	23	100
Other for-profit and non-profit organizations such as trade associations, research institutes, etc.	58	155
TOTAL	233	711

SOURCE: King Research, Inc., Survey of Copyright Attorneys and Industry Executives (n = 233)

The largest group of organizations is law firms or individual lawyers in private practice (42% of organizations or individuals).

The law firms tend to be rather large, having an average of 30 senior lawyers, executives or equivalent employees and 55 other employees. In fact, they average about 4.9 attorneys who have conducted copyright-related matters during the past year. The textile companies also tend to be very large, with an average of 124 senior employees and 5,800 other employees. On the other hand, the motion picture companies are much smaller on the average with 13 senior employees and 1,800 other employees. Two motion picture companies with 30,000 and 10,000 employees dominates this average of other employees. Otherwise, the average is 145 other employees. The average number of attorneys per company engaged in copyright matters is 0.6 in the textile industry and 1.5 in the motion picture industry. In fact, about one-half of the textile and motion picture companies do not have attorneys who have dealt with copyright matters. However, most of these companies have consulted outside legal counsel to assist with copyright-related matters (89% textile and 70% motion picture). The other types of companies average 2.9 attorneys per company. These other companies may be firms that also deal with copyright such as publishers.

The persons who responded to the survey were asked questions about themselves and about their organizations. They were also asked to consult with other attorneys or staff members to help ensure that the responses to the questionnaire dealing with the entire organization would properly represent the entire group. The average number of attorneys per organization who have conducted copyright-related matters was 3.1 attorneys per firm or company. Thus, the total number of such attorneys represented by the survey respondents is about 2,180 attorneys. Projected to the population total, it is estimated that 1,450 relevant lawyers are found in law firms, 230 in motion picture companies, 50 in textile companies and 450 in other types of organizations. Most of the respondents are attorneys (80%) and they are rather active in copyright matters. In fact, Table 8 gives the proportion of time spent on copyright matters (in the past 12 months) by type of copyright groups. They have personally worked with all of the groups in the table to some degree. However, the two groups most frequently worked with or for are creators (authors, composers, playwrights, etc.) and motion picture producers/distributors.

TABLE 8

PROPORTION OF ATTORNEYS AND INDUSTRY EXECUTIVES WHO PERSONALLY WORKED WITH OR FOR VARIOUS COPYRIGHT GROUPS BY AMOUNT OF TIME SPENT AND TYPE OF GROUP: 1984/85

Type of Group	Proportion of Time Spent in Past 12 Months More than 10%	 Less than 10%	 None %	 Total %
Motion picture producer, distributors	25.1	27.3	47.6	100
Creators (authors, composers playwrights, etc.)	32.2	43.5	24.3	100
Record/Audio cassette producers/distributors	11.3	30.0	58.7	100
Video cassette/disc producers/distributors	14.8	30.4	54.8	100
Television Producers	17.4	30.0	52.6	100
Textile Manufacturers	8.7	12.2	79.1	100
Textile Converters	7.4	7.8	84.8	100
Clothing, apparel manufacturers	8.3	16.5	75.2	100
Furniture/floor/wall covering manufacturers	6.1	10.4	83.5	100
Publishers - print	19.6	40.4	40.0	100
Publishers - music	11.7	28.3	60.0	100
Government Agencies	14.8	32.2	53.0	100
Trade Associations	8.3	31.3	60.4	100
Other	14.0	6.1	79.9	100

SOURCE: King Research, Inc., Survey of Copyright Attorneys and Industry Executives (n = 233)

In the next section, we deal with activities involving potential copyright infringements. These activities are sub-divided by those involving monitoring or identifying potential infringements, disputes (up to lawsuits) and lawsuits. In each case, the number of potential infringements, dispositions, and outcomes are estimated. Also, the resources involved in the activities are given. These resources include number of hours expended by senior staff (i.e., lawyers, executives, etc.) and others. Also, outcomes of disputes and lawsuits such as awards for statutory damage, legal fees or monetary compensation are also estimated.

5.4 Copyright Infringement Process in the Motion Picture and Textile Industries

An approximation of infringement processes is given in Figure 5. The overall process begins with copyright infringement (or belief that one exists). The extent of infringement detection is dependent on monitoring or observing the marketplace for infringements. If an infringement is detected, then a course of action may be set forth, or the infringement may be disregarded. Usually, an initial dispute concerning the copyright infringement will take place where an attempt may be made for an out-of-court settlement such as to discontinue infringement activities or to gain some financial settlement. If a settlement can not be reached out-of-court, the complainant may discontinue the dispute or initiate formal litigation proceedings. At that time a settlement could take place prior to going to court, while court proceedings are taking place or when a court ruling takes place. Such judgement might be in favor of the defendent or in favor of the plaintiff in which case the outcome might be an injunction against the defendent, damages imposed on the defendent or damages and fees awarded to the plaintiff. Below, we describe the extent to which the infringement processes take place and the amount of resources expended in these processes for the motion picture and textile industries.

5.4.1 Monitoring for Infringements of Copyright

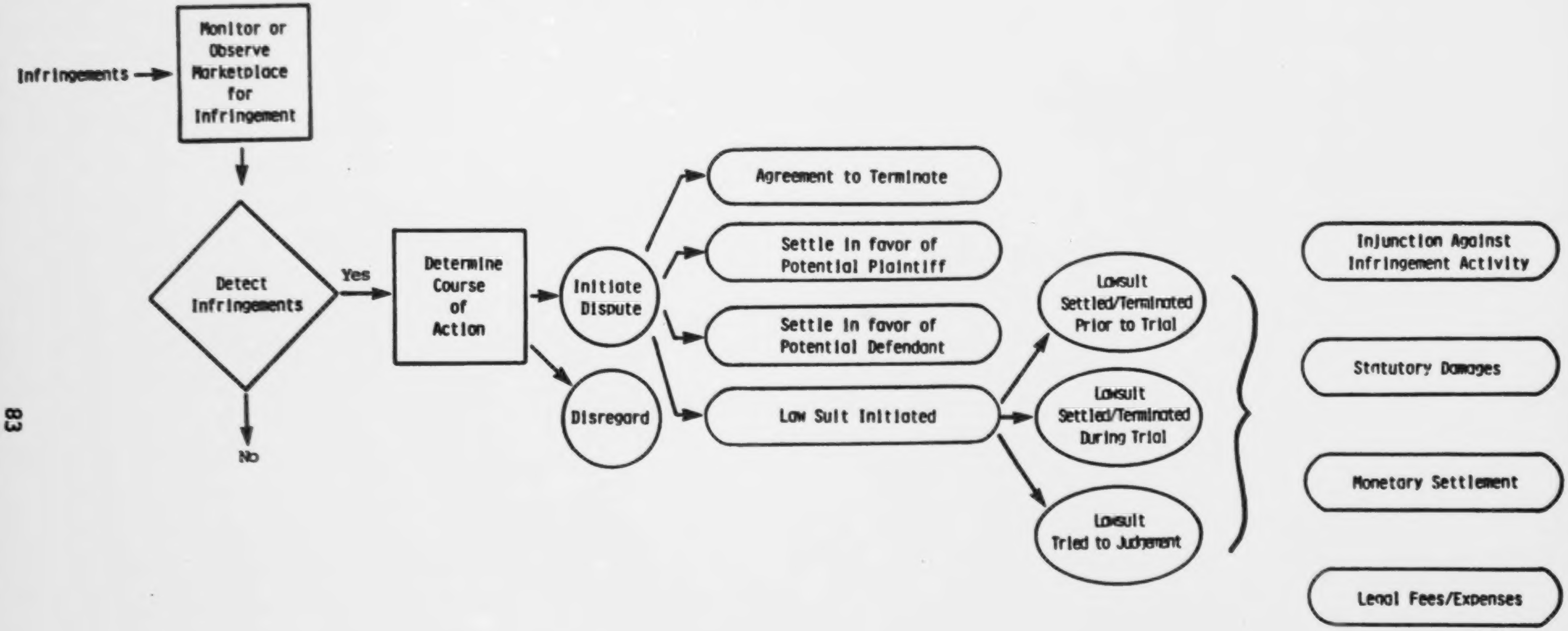
Detection of potential copyright infringements can take place in many ways. Many companies in an industry monitor the marketplace for infringements. Others rely on law firms or others to monitor for infringements in lieu of or to complement their own monitoring. Also, potential infringements are serendipitiously identified by others such as product customers or movie goers. Below we indicate the extent of monitoring done in the motion picture and textile industries. Also, estimated numbers of potential copyright infringements that are detected in each industry are given.

The Motion Picture Industry

Monitoring for infringements in the motion picture industry is done by motion picture companies as well as outside lawyers and others. Of the

FIGURE 5

COPYRIGHT INFRINGEMENT PROCESS


Infringements
Monitor or Observe Marketplace for Infringement
Detect Infringements
Yes
No
Determine Course of Action
Initiate Dispute
Disregard
Agreement to Terminate
Settle in favor of Potential Plaintiff
Settle in favor of Potential Defendant
Law Suit Initiated
Lawsuit Settled/Terminated Prior to Trial
Lawsuit Settled/Terminated During Trial
Lawsuit Tried to Judgement
Injunction Against Infringement Activity
Statutory Damages
Monetary Settlement
Legal Fees/Expenses

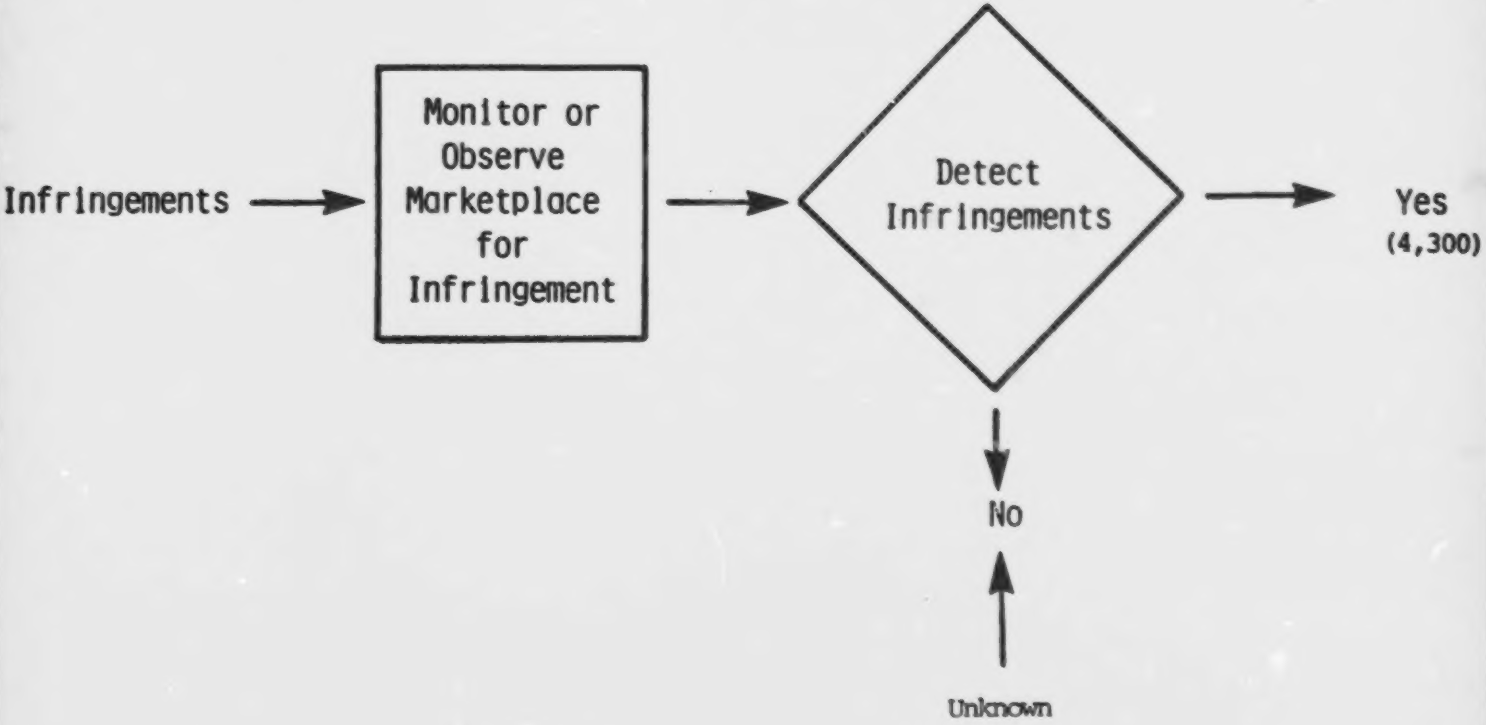
157 motion picture companies, 89 percent of them (140) are estimated to monitor for infringement of copyright. In fact, they expend about 27,000 hours in this activity (or about 193 hours per year per company that does monitoring). As a result of this effort they detected an estimated 1,800 potential copyright infringements. Thus, they expend about 15 hours monitoring per potential copyright infringement detected. In addition, the motion picture companies also are estimated to have 2,500 more potential copyright infringements that were detected by individuals or organizations outside their company in the past year. Law firms detected about 180 of these potential copyright infringements in the motion picture field and indicated that about 150 of their cases were identified externally to their firm. They devoted about 1,100 hours of monitoring for copyright infringement in the motion picture area. In addition, other kinds of organizations detected about 30 potential copyright infringements at a cost of 470 hours. Thus, altogether in the motion picture industry it is estimated that:

- there are about 4,300 potential copyright infringements detected,
- about 28,600 hours were spent monitoring for infringements, and
- about seven hours were spent per potential infringement detected.

These data are depicted graphically in Figure 6.

FIGURE 6

PROCESS FOR MONITORING FOR INFRINGEMENT OF COPYRIGHT MOTION PICTURES


Infringements
Monitor or Observe Marketplace for Infringement
Detect Infringements
Yes
(4,300)
No
Unknown

The Textile Industry

Only 61 percent of the 100 textile companies said that they monitor for copyright infringements and they spend about 4,870 hours doing so (or 80 hours per company that does monitor). They detected only 375 potential copyright infringements (or 13 hours monitoring per potential infringement detected). In addition they indicated that 90 potential infringements were detected outside of their companies. In addition, for the textile industry, law firms spent 740 hours monitoring for infringement in this area and detected about 260 potential copyright infringements. Other organizations are estimated to also detect 65 potential infringements in the textile area at a cost of 470 hours. Thus, estimates in the textile industry are that:

- there are about 375 potential copyright infringements detected,
- 4,870 hours were spent monitoring, and
- about 13 hours were spent per potential infringement detected.

These data are given graphically in Figure 7.

5.4.2 Copyright Infringement Disputes

Once a potential infringement is detected, the law firms and companies must decide whether or not to dispute detected copyright infringements. By this, we mean to notify suspected infringers of the complaints, whether by telephone call, warning letter, or service of process. Extent and outcomes of copyrignt infringement disputes are given for the motion picture and textile industries below.

The Motion Picture Industry

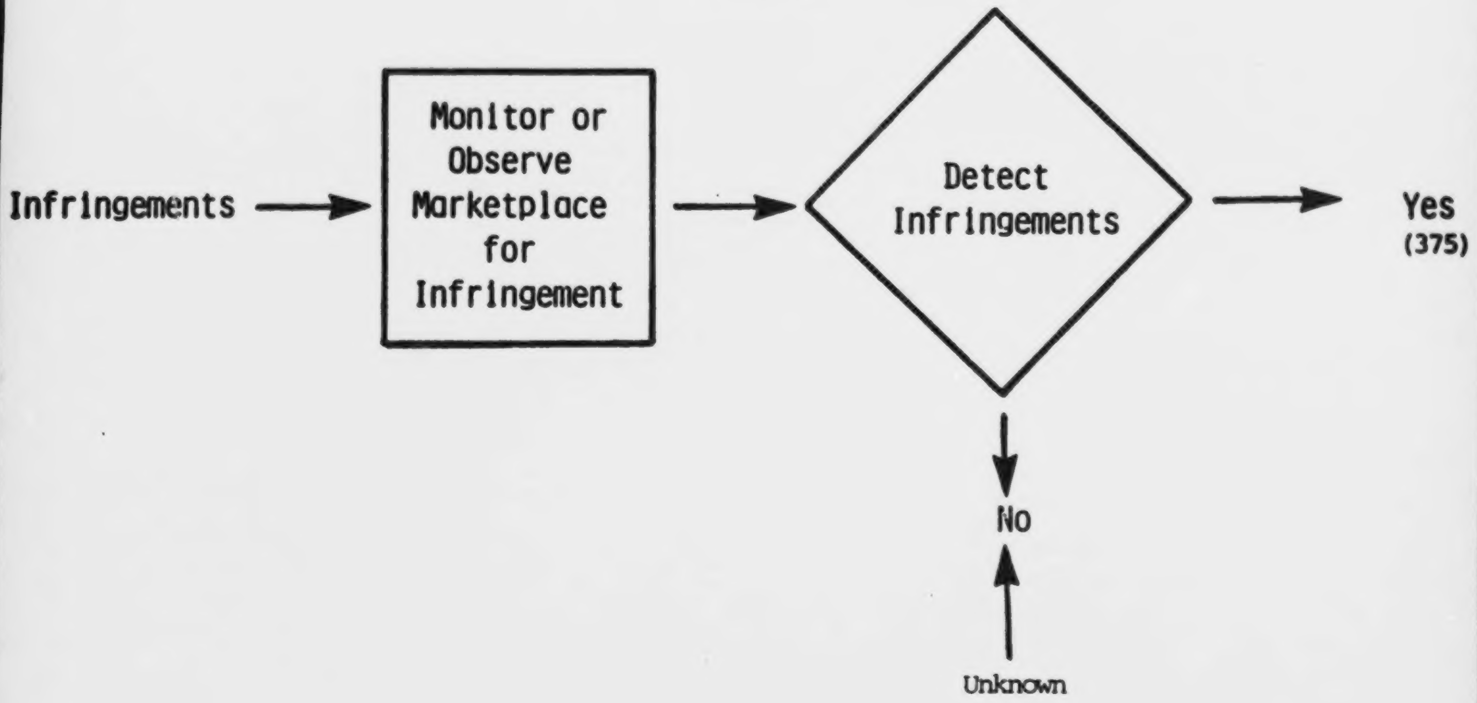
In the motion picture industry it is estimated that a potential infringement is disregarded in about ten percent of the 4,300 instances in which a potential copyright infringement is detected. The principal reasons given for not initiating a dispute in these 410 instances are:

- Too difficult or expensive to identify infringer (41%)
- Minor infringement which is not worth pursuing (15%)

FIGURE 7

PROCESS FOR MONITORING FOR INFRINGEMENT OF COPYRIGHT

TEXTILES


Infringements
Monitor or Observe Marketplace for Infringement
Detect Infringements
Yes
(375)
No
Unknown

- Too difficult or expensive to prove ownership (2%)
- Copyright notice was not affixed to work (1%)

There is a cost associated with making this decision in that 9,930 hours are estimated to be spent by motion picture companies (157) or law firms (67) in determining whether or not to dispute detected copyright infringements. This cost comes to about 2.3 hours per detected potential infringement in this industry. Beyond that, these organizations spent an additional 8,980 hours of senior lawyer, executive or equivalent time and 19,200 hours of other personnel in dealing with all of the 3,890 disputes that they went ahead on (i.e., 2.3 hours and 4.9 hours per dispute respectively).

Of these 3,890 disputes, a total of 2,840 disputes (73%) were resolved by an agreement to terminate the infringement activity. The remainder had some monetary compensation ($5.3 million). Legal fees or expenses received are estimated to be about $4.5 million. These outcomes are displayed in Figure 8.

Textile Industry

Also in the textile industry about ten percent of the infringements in which a potential copyright infringement is detected are disregarded. The principal reasons given for not initiating a dispute in these 38 instances are as follows:

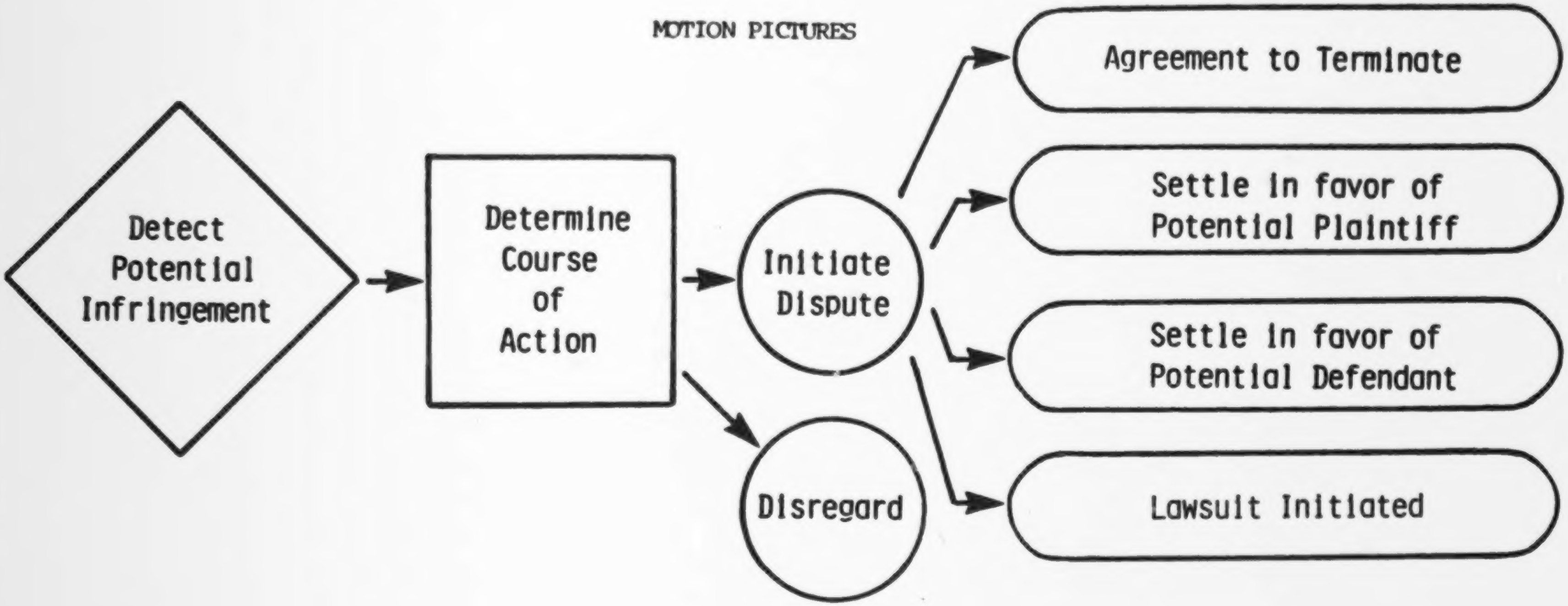
- Too difficult or expensive to prove ownership (11%)
- Minor infringement, not worth pursuing (8%)
- Too difficult or expensive to identify infringer (6%)
- Copyright notice not affixed to work (6%)
- Too difficult or expensive to prove infringement (3%)

This industry spent about 5,470 hours in deciding whether or not to dispute detected copyrignt infringements. This average cost per detected potential

FIGURE 8

PROCESS FOR COPYRIGHT INFRINGEMENT DISPUTES

MOTION PICTURES


Detect Potential Infringement
Determine Course of Action
Initiate Dispute
Disregard
Agreement to Terminate
Settle in favor of Potential Plaintiff
Settle in favor of Potential Defendant
Lawsuit Initiated

4,300

3,890 initiated
410 disregarded

2,840	Agreement to Terminate
303	Settlement
747	Lawsuit Initiated

infringement is about 14.6 hours spent by textile companies (43) and law firms (42). In addition, about 1,760 hours of senior lawyers, executives or equivalent time is spent in dealing with the 337 disputes that textile companies and law firms went ahead on. They also spent about four times that amount of time (27,200 hours) in terms of other personnel pursuing this activity. This averages about 20 hours and 80 hours respectively for senior and other staff. This average amount of time for the textile industry is somewhat greater than for the motion picture industry.

Of the 337 disputes in which infringement activity was initiated, about 32 percent (107) were resolved by having an agreement to terminate the infringement activity. The remainder had monetary compensation of about $220,000. Compensation for legal fees came to a little over half that amount -- $120,000. These outcomes are displayed in Figure 9. An estimated 153 disputes had lawsuits initiated.

5.4.3 Copyright Infringement Lawsuits

In some instances, disputes concerning potential infringements go to the point where a lawsuit is initiated. The outcome of a lawsuit will normally be that it is settled or terminated prior to trial or during the trial, or that it is tried to judgement. If tried to judgement, its outcome may be that the case is resolved in favor of the defendent or that an injunction is made against infringement activity or there is monitary award in terms of statutory damages, legal fees and expenses or other monetary settlement. The number of copyright lawsuits and outcomes are described below for the motion picture and textile industries.

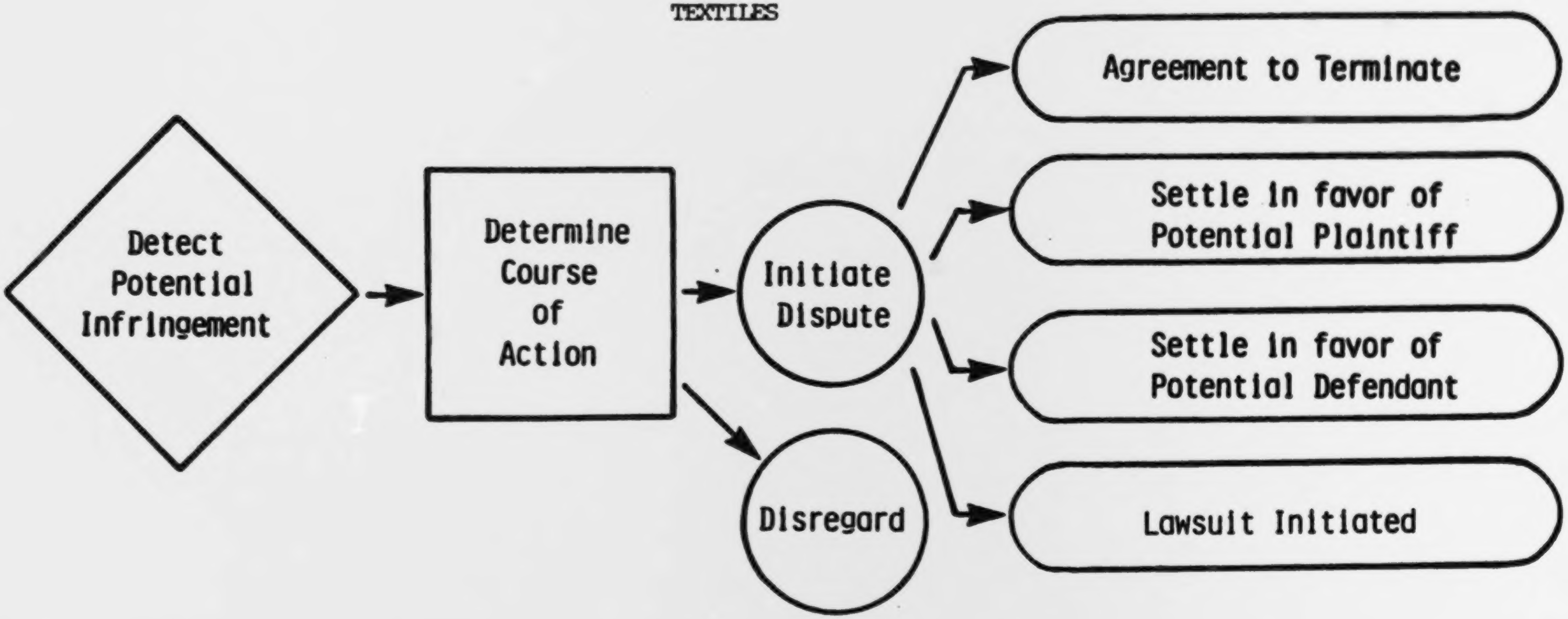
The Motion Picture Industry

Out of the estimated 3,890 disputes that were not initially disregarded, about 747 lawsuits were initiated in the motion picture industry (depicted in Figure 10). Of this number, about 13 percent (96) were tried to judgement. By far, the most frequent outcome is settlement prior to trial in this industry, amounting to nearly three-fourths (562) of the lawsuits. About 12 percent (89) of the lawsuits are settled or otherwise terminated during the time the trial is in process. The total amount of

FIGURE 9

PROCESS FOR COPYRIGHT INFRINGEMENT DISPUTES

TEXTILES


Detect Potential Infringement
Determine Course of Action
Initiate Dispute
Disregard
Agreement to Terminate
Settle in favor of Potential Plaintiff
Settle in favor of Potential Defendant
Lawsuit Initiated

375

337 initiated
38 disregarded

107 Agreement to Terminate

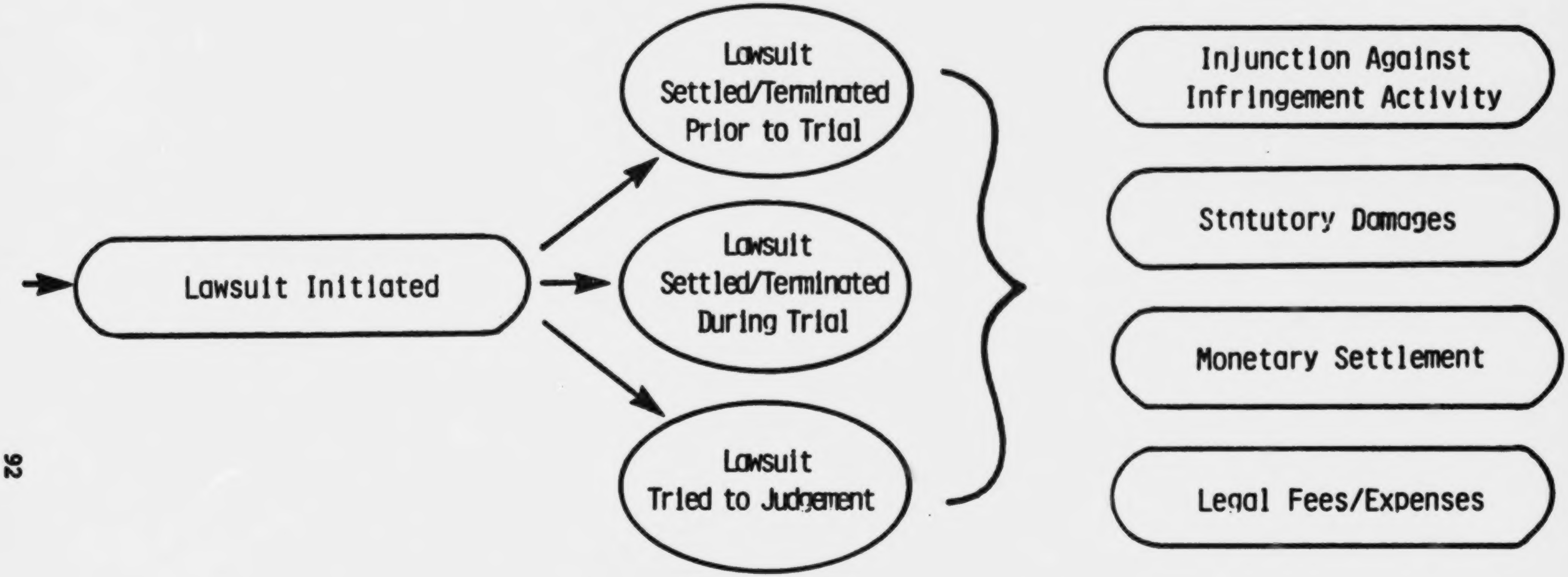
77 Settlement

153 Lawsuit Initiated

FIGURE 10

PROCESS FOR COPYRIGHT INFRINGEMENT LAWSUITS

MOTION PICTURE


Lawsuit Initiated
Lawsuit Settled/Terminated Prior to Trial
Lawsuit Settled/Terminated During Trial
Lawsuit Tried to Judgement
Injunction Against Infringement Activity
Statutory Damages
Monetary Settlement
Legal Fees/Expenses

Number: 747

562 prior to trial
89 during trial
96 trial to judgement

time devoted to lawsuits (as plantiffs and defendents) amounts to 43,300 hours of senior lawyers, executives or equivalent level persons and 21,400 hours of other persons. It is noted that senior time exceeds other persons' time in lawsuits, but the reverse is true for other copyright activities such as monitoring for infringements or for copyright infringement disputes (prior to lawsuits).

The average time per lawsuit is about 58 hours of senior time and 29 hours of other time. The amount of time involved in copyright lawsuits is substantial, but the monetary awards can be very large as well. For the 747 lawsuits in the motion picture industry, injunctions were made against infringement activity in 107 cases (not including those agreements to terminate infringement activity that were settled during dispute). The monetary outcomes are estimated to be as follows (note that average awards are based on small samples):

Awards to plaintiffs:

	Total
(1) Damages	$3.4 mil.
(2) Legal fees or expenses	$6.4 mil.
(3) Monetary settlement	$1.3 mil.
(4) Other	$0.4 mil.

Awards to defendents:

(1) Total fees, expenses or damages	$200,000

Thus, even though expenses involved with lawsuits are high, so are the potential returns -- $11.5 million to plaintiffs and $200,000 to defendents.

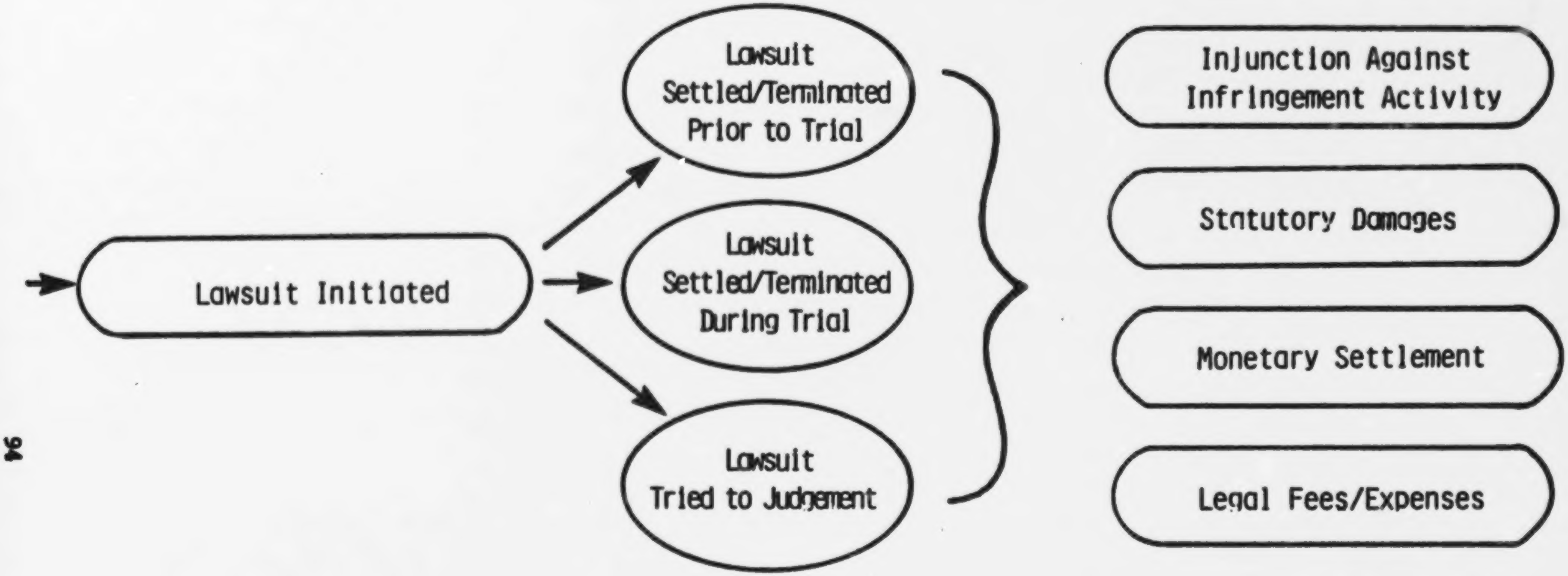
The Textile Industry

Of the estimated 337 disputes that were not disregarded in the textile industry, about 153 lawsuits were initiated (depicted in figure 11). This proportion is substantially higher than in the motion picture industry (45% textile industry versus 19% for motion picture industry). Of

FIGURE 11

PROCESS FOR COPYRIGHT INFRINGEMENT LAWSUITS

TEXTILE


Lawsuit Initiated
Lawsuit Settled/Terminated Prior to Trial
Lawsuit Settled/Terminated During Trial
Lawsuit Tried to Judgement
Injunction Against Infringement Activity
Statutory Damages
Monetary Settlement
Legal Fees/Expenses

Number: 153

106 prior to trial
21 during trial
26 trial to judgement

the 153 lawsuits, about 26 were tried to judgement. About 106 lawsuits were settled or otherwise terminated prior to trial and 21 were settled during the time of the trial. The total amount of time devoted to lawsuits as plaintiffs and defendents is estimated to be 11,600 hours of senior time and 4,700 hours of other time. The average amount of time per lawsuit is 76 hours for senior persons and 31 for other staff. Awards to plaintiffs and defendents are as follows:

Awards to plaintiffs:

	Total
(1) Damages	$ 194,000
(2) Legal fees or expenses	$ 463,000
(3) Monetary settlement	$2,421,000
(4) Other	None observed

Awards to defendents:

(1) Total fees, expenses or damages	$ 110,000

Again, as with the motion picture industry, the stakes can be quite high.

5.5 Non-U.S. Copyright Experience

About one-half of the respondents (51%) indicated that they or their firm had foreign copyright experience during the last five years. The countries where this foreign copyright experience was gained are displayed in Table 9. Of those respondents with foreign experience, most had transacted copyright business or disputes with the United Kingdom (73%) and Canada (63%). About two-fifths of them had experience with France, West Germany, and Australia. However, many other countries are involved, as well, as shown in Table 9.

TABLE 9

PROPORTION OF RESPONDING FIRMS WITH FOREIGN COPYRIGHT EXPERIENCE DURING THE PAST FIVE YEARS BY COUNTRY IN WHICH THEY HAVE COPYRIGHT EXPERIENCE: 1984/85

Country	Proportion of Responding Firms (%)
United Kingdom	73
Canada	63
France	42
West Germany	42
Australia	40
Japan	33
Mexico	29
Sweden	20
Other European	28
Other Asian	29
Latin American (other than Mexico)	27
African	22

SOURCE: King Research, Inc., Survey of Copyright Attorneys and Industry Executives (n = 233)

A closely related question concerns the foreign country in which the most copyright related business was done. Table 10 shows that UK and Canada are often the countries in which most copyright related business is conducted. Otherwise country rankings in Table 10 are seen to be similiar to those of Table 9. An exception is that Sweden was never selected by survey respondents as a country in which the most copyright related experience was done.

TABLE 10

PROPORTION OF FIRMS DOING THE MOST COPYRIGHT RELATED BUSINESS IN VARIOUS FOREIGN COUNTRIES BY COUNTRY: 1984/85

Country	Proportion of Responding Firms (%)
United Kingdom	42
Canada	22
France	6
West Germany	6
Australia	3
Japan	3
Mexico	3
Other European	3
Other Asian	6
Latin American (other than Mexico)	2
African	4
All Countries	100

SOURCE: King Research, Inc., Survey of Copyright Attorneys and Industry Executives (n = 233)

Within the last 5-year period, 36 percent of the firms used one of the formality systems (registration, recordation, or deposit system) in a foreign country. Eleven percent were compelled to use the foreign country's formality systems and 25 percent elected to use the foreign country's formality system. These results are summarized in Table 11.

TABLE 11

PROPORTION OF FIRMS WITH FOREIGN COPYRIGHT EXPERIENCE THAT USED THE FOREIGN COUNTRY'S FORMALITY SYSTEM: 1984/85

	Proportion of Responding Firms	
		(%)
Used Foreign Formality System		36
Compelled to use	11	
Elected to use	25	
Did Not Use Foreign Formality System		64
Total		100%

SOURCE: King Research, Inc., Survey of Copyright Attorneys and Industry Executives (n = 233)

The firms that did use a formality system in a foreign country, enumerated an average of 1.3 specific instances per firm indicating which formality system was used in which country, what type of work was involved, whether or not the system was compulsory (as opposed to voluntary), whether the system was public or private, what fees were required and what was the value of any deposit made. Table 12 summarizes the results of these instances.

In keeping with the previous results, Canada and the United Kingdom are the two most frequently cited foreign countries in which copyright related business (or instances) is done; these two countries account for 50 percent of the instances. Motion pictures were cited as the type of work in 34 percent of these instances, and fabric design was cited in 11 percent of these instances. Concerning what formality system was used, results in

Table 12 show that in 63 percent of the instances registration was used, in 41 percent of the instances recordation was used, and in 38 percent of the instances deposit was used.

TABLE 12

PROPORTION OF FIRMS THAT USED A FORMALITY SYSTEM IN A FOREIGN COUNTRY BY COUNTRY, BY TYPE OF WORK, AND BY FORMALITY SYSTEM USED: 1984/85

Factor	Proportion of Responding Firms (%)
Country Where Formality System Was Used	
United Kingdom	20
Canada	30
France	6
West Germany	6
All Other Countries	38
Type of Work	
Motion Pictures	34
Fabric Designs	11
Other	55
Formality System Used[a]	
Registration	63
Recordation	41
Deposit	38

SOURCE: King Research, Inc., Survey of Copyright Attorneys and Industry Executives (n = 233)

a. In some of the instances, more than one formality system was used; therefore, the percentages add up to more than 100 percent.

Table 13 indicates the nature of the formality systems of foreign countries as indicated by the instances of use of these systems. Concerning the question of whether the formality system of the foreign country was compulsory or voluntary, we see that in 48 percent of the uses of a foreign registration system, registration was compulsory; in the remaining 52 percent of the uses of a foreign registration system, registration was used voluntarily. In 44 percent of the uses of a foreign recordation system, recordation was compulsory; in the remaining uses, recordation was voluntary. In 50 percent of the uses of a foreign deposit system, deposit was compulsory.

TABLE 13

PROPORTION OF INSTANCES OF USES IN WHICH THE FORMALITY SYSTEM WAS COMPULSORY OR PUBLIC, AND THE AVERAGE FEE: 1984/85

Formality System	Proportion Compulsory (%)	Proportion Public (%)	Average Fee[a]
Registration	48	100	$197
Recordation	44	90	382
Deposit[b]	50	95	95

SOURCE: King Research, Inc., Survey of Copyright Attorneys and Industry Executives (n = 233)

a. Fewer than ten firms provided an estimate of the fee.

b. Estimates for the value of a deposit ranged between 0 and $1,500 (for a Motion Picture); the average of the estimated value for 19 deposits was $286.

SECTION 6

COST, EFFECTIVENESS AND BENEFITS OF COPYRIGHT PROCESSES

6.1 Framework for Cost, Effectiveness and Benefit Analysis of Copyright Processes

In the analysis below, we investigate the cost of copyright processes to the U.S. Copyright Office, companies involved in motion picture and textiles and law firms concerned about corresponding copyrighted works. The costs include registration, deposit, recording of ownership transfers, monitoring for infringements, disputes and lawsuits. The effectiveness of the copyright processes includes the extent to which potential infringements are identified and avoided. Other effects include non-litigory uses of information found on the Copyright Office records and, for publications, access to the literature and the extensive bibliographic records which are used worldwide. Additional higher order effects include the satisfaction of authors, creators and owners in knowing that their creative works are protected from infringement. This in turn spurs an incentive to continue creating such works. All of society benefits by the fact that many works will continue to be available.

An analysis of the costs (detriments) and benefits is achieved by comparing the existing copyright system or specific formalities (e.g., registration, deposit, notice or transfer or records) with alternatives (including not having the formalities). The results of comparison can be made for the U.S. Copyright Office, the remainder of the copyright community and all of society. If, at each of these levels, the comparison is favorable it is recorded as a benefit and if it is unfavorable, it is recorded as a cost. For example, if the extent of registration is reduced, the cost to the Copyright Office would be less, and therefore, recorded as a benefit by the difference in current costs less costs with reduced registration. Cost (i.e., detriments) would be the extent to which the infringements are increased and additional expenditures that result from monitoring disputes and lawsuits.

6.2 Input Resources

In this section we summarize the total costs to the U.S. Copyright Office and other participants in the copyright processes. These costs are given for motion picture works and fabric design works. In order to be consistent, the number of registrations for motion picture and fabric design works are assumed to be 6,330 and 9,490 registrations respectively, based on survey estimates. The total input resources (cost) of registration (and deposit) to the Copyright Office is estimated to be $180,000 for motion picture works and $270,000 for fabric design works. These costs are small compared to the costs incurred by the motion picture and textile industries. Based on an average of 4.0 hours of senior lawyer, executive or equivalent level persons and 2.2 hours of other personnel, the total costs of copyright registration is about $7.0 million*. However, the relative cost to the motion picture industry is much higher than the textile industry. The average cost per motion picture work registered is $850 for the motion picture industry versus $170 for the textile industry. The reason for the high costs to the motion picture industry is a large number of hours spent by senior lawyers, executives or equivalent staff. Across both industries, the average time spent by senior lawyers in law firms is 1.6 hours per registration and the average senior time in textile companies is 1.3 hours per registration. In motion picture companies this average is 8.8 hours per copyright registration. Thus, the total cost for registering in the motion picture industry is $5.4 million and this cost is $1.6 million in the textile industry.

In addition to labor costs, there are other costs associated with registration of copyright materials as well. For example, there is some value associated with copies of the work that are deposited with the U.S. Copyright Office. As expected, the average value of motion picture deposits is estimated to be much more than for textile works ($860 versus $28).

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*It is assumed that senior costs for labor time are about $100/hour, other personnel about $20/hour, and $40/hour when type of personnel is not specified.

Thus, the total cost to the motion picture industry is much greater; $5.5 million compared to $320,000 for the textile industry. Another cost to the depositors is in preparing the identifying materials. Here the average cost per registration is $10 per deposit for motion picture materials and about double that amount ($21) for fabric design materials. The total amount for the two industries is $63,000 and $202,000 respectively.

The total costs of registration to the U.S. Copyright Office and motion picture and textile industries is $13.5 million. Of that amount only three percent is expended by the U.S. Copyright Office and nearly one third of that amount is recovered by registration fees. The total cost to the motion picture industry ($11.0 million) is far greater than to the textile industry ($2.2 million). This total cost reflects the fact that the average cost per registration in the motion picture industry is about $1,740 compared to only $230 for the textile industry. A similar picture emerges for other copyright-related processes as well.

Recordation is less costly to the copyright community than registration and deposit, partially because there are fewer transactions involved. It is estimated from the survey that there are currently about 2,980 transfers of motion picture works and only 320 transfers of fabric design works. The cost to the U.S. Copyright Office of these transfers is estimated to be about $50,000 for motion picture works and $5,000 for fabric design works. The cost to industry is $2.9 million for motion picture works, or about $970 per transfer. Whereas, transfers in the design industry average $185 per transfer or about $59,000 altogether. The large cost to the motion picture industry is dominated by senior time devoted to transfer by motion picture companies (as was also observed with registration).

The cost of infringement processes is also substantial for the industries. For example, monitoring for potential infringements costs the motion picture industry about $1.1 million and the textile industry about $190,000. Disputes are even more expensive with costs of deciding whether to dispute potential infringements being about $400,000 for the motion picture industry and $220,000 for the textile industry. The other costs of disputes comes to $1.3 million in the motion picture industry and $720,000 in the textile industry. Lawsuits come to $4.8 million and $1.3 million for the motion picture and textile industries respectively.

Total input resources are summarized in Table 14 below:

TABLE 14

TOTAL INPUT RESOURCES FOR COPYRIGHT FORMALITIES AND INFRINGEMENT PROCESSES, BY MOTION PICTURE AND TEXTILE INDUSTRIES: 1984/85

Copyright Activities	Motion Picture	Textile
Copyright Formalities		
Registration	$ 5.6 million	$1.9 million
Deposit	5.5 million	0.5 million
Recordation	2.9 million	0.1 million
Total	$14.0 million	$2.5 million
Copyright Infringement Processes		
Monitoring	$ 1.1 million	$0.2 million
Disputes	1.7 million	0.9 million
Lawsuits	4.8 million	1.3 million
Total	$ 7.6 million	$2.4 million
Grand Total	$21.6 million	$4.9 million

SOURCE: King Research Inc., Survey of Copyright Attorneys and Industry Executives (n = 233)

The total costs to the copyright community for motion picture and fabric design works is about $26.5 million.

6.3 Indicators of the Effectiveness of Copyright Formalities

Effectiveness of copyright formalities begins with extent of use of the formalities, purposes for which they are used and whether the formalities had any bearing on copyright legal activities. Other indicators of effectiveness of formalities are what the copyright community pays for them (and what they might be willing to pay). Finally, in this section we discuss opinions concerning the relative use and value of copyright formalities compared with the copyright formalities in other countries.

Use of Copyright Formalities for Copyright Disputes and Lawsuits

Probably the most important purpose for which copyright formalities are used is in resolving disputes and lawsuits. Below in Table 15 are given the proportion of lawsuits in which various copyright-related legal issues were said to be important to the case. The copyright notice and registration of copyright both appear to be important in a large proportion of lawsuits. In fact, in most instances of disputes and lawsuits the work was registered with the U.S. Copyright Office and the registration was stated to be important in resolving or terminating the dispute or lawsuit. Results of the importance of registration are evidenced in Table 16. Registration of the work under dispute or lawsuit is common for both disputes (81%) and lawsuits (90%). That is, registration done specifically for lawsuits appears to be more common than for registration done specifically for disputes (19% versus 10%); perhaps because disputes may be settled before the registration is necessary. Registration of the works is very common for disputes and lawsuits involving works from the motion picture and textile industries. Further evidence of the effectiveness of registration is that in 71 percent of the disputes and 80 percent of the lawsuits, registration was found to be very important (46% and 59% respectively) or somewhat important (25% and 21% respectively) in resolving or terminating the dispute or lawsuit. Registration of the work seems to be more important in resolving disputes or lawsuits in the textile industry than in the motion picture industry.

Another source of evidence concerning effectiveness of registration of copyrighted works is how important the prima facie evidence contained in the registration certificate was in helping to settle or terminate litigation. In only about one-fourth of the lawsuits was prima facie evidence found to be not important in helping settle or terminate litigation. In 55 percent of the lawsuits it was found to be very important and in 21 percent somewhat important. When prima facie evidence supplied by the copyright registration was challenged, the challenge was not successful 83 percent of the time.

Copyright Office records (i.e., copyright registration certificates, the Copyright Office card catalog, its correspondence files etc.) have been used in litigation by 85 percent of the law firms and other companies. The various functions of the Copyright Office records used during litigation are given in Table 17.

TABLE 15

PROPORTION OF RESPONDENTS WHO INDICATED THAT COPYRIGHT-RELATED ISSUES WERE IMPORTANT IN THEIR MOST RECENT LAWSUITS: 1984/85

Copyright-related Issue	Proportion of Most Recent Lawsuits (%)
Copyright notice	52
Registration of copyright	66
Deposit with Copyright Office/Library of Congress	25
Assignment of Copyright	30
Recordation of ownership	23
Terminations of copyright transfers	4
Copyright renewal	9
Licensing	8
Evidence of ownership	24
Copyrightability	37
Copying/plagiarism	50
Commercial piracy/unauthorized selling	26
Unauthorized public performance	9
Breach of Contract	20
Work made for hire	15
Fair use	18
Other	2

SOURCE: King Research Inc., Survey of Copyright Attorneys and Industry Executives (n = 233)

TABLE 16

PROPORTION OF DISPUTES AND LAWSUITS IN WHICH THE WORK IS REGISTERED ROUTINELY BEFORE OR SPECIFICALLY FOR THE DISPUTE AND LAWSUIT AND IMPORTANCE OF REGISTRATION IN RESOLVING OR TERMINATING DISPUTES AND LAWSUITS: 1984/85

	Proportion of Disputes/Lawsuits (%)
Dispute	
Work registered routinely before dispute	71
Work registered specifically for dispute	10
Importance of registration in resolving dispute	
Very important	46
Somewhat important	25
Not important	29
Lawsuit	
Work registered routinely before lawsuit	71
Work registered specifically for lawsuit	19
Importance of registration in resolving lawsuit	
Very important	59
Somewhat important	21
Not important	20

SOURCE: King Research Inc., Survey of Copyright Attorneys and Industry Executives (n = 233)

TABLE 17

PROPORTION OF LAW FIRMS AND COMPANIES THAT HAVE USED COPYRIGHT OFFICE RECORDS TO PERFORM VARIOUS FUNCTIONS INVOLVED IN LITIGATION: 1984/85

Functions of Copyright Office Records During Litigation	Proportion of Law Firms & Companies (%)
Helping prove the date of work's creation	41
Helping prove the date of ownership transfer for a previously-registered work	26
Helping prove the date of registration	54
Helping prove the identity of the owner who was the creator, or vice-versa	46
Helping prove the identity of the creator, who was not the owner, or vice-versa	28
Helping prove that the work is registered	81
Helping prove that the registration had been renewed	25
Helping prove the fact that irregularities existed — or did not exist — with the way that the work was registered	26
Using or referring to the registration certificate as a means of "warning" a known or suspected infringer, prior to actually filing a lawsuit	36
Other use(s) of copyrignt registration certificate(s) during litigation	11

SOURCE: King Research Inc., Survey of Copyright Attorneys and Industry Executives (n = 233)

The most obvious function of the Copyright Office records used during litigation was to help prove that the work was registered (81%). However, other frequent functions of the records were helping to prove (1) the date of registration (54%), and (2) the identity of the owner who was the creator, or vice versa (46%), and (3) the date of a work's creation (41%). However, many other functions of the Copyright Office records are frequently used as well.

The cost is substantial to participants in using (i.e., retrieved, read copied, or used in any way) a copyright certificate or other Copyright Office record in connection with the preparation of a lawsuit.

Use of Copyright Formalities in a Non-Litigation Context

Over a recent 12 month period, about 40 percent of the law firms and companies had read, consulted, copied, retrieved or otherwise used copyright registration certificates or other records for purposes other than litigation. This was done more frequently in law firms (44%) and motion picture companies (57%) than with textile companies (6%). Of those who did, the average number of times that the organization read, consulted or examined any Copyright Office records was 56.4 or a total of 4,500 over all law firms and movie and textile companies. Of the motion picture and textile design registration certificates used, by far the most involved feature-length motion pictures (75%) or work associated with the creation or production of a feature-length motion picture (21%). The reasons why Copyright Office records were used are given in Table 18.

The potential use most frequently cited was to determine whether a particular work was still protected by copyright (56% most recent, 41% second most recent). Other frequently cited uses were (1) to identify or locate the current owner of a particular work which the respondent or a client was considering purchasing or licensing (39% most recent, 31% second most recent) and (2) to determine whether copyrights in a particular work had been transferred (38% most recent, 36% second most recent).

There are several sources for obtaining access to the Copyright Office records. The most frequently used source is directly from the U.S. Copyright Office; used directly 45 percent of the time and through a law

TABLE 18

PROPORTION OF USES OF COPYRIGHT RECORDS BY TYPE OF POTENTIAL USE FOR THE MOST RECENT AND SECOND MOST RECENT USES: 1984/85

	Proportion Relevant	
Potential Use of Copyright Office Records	Most Recent (%)	Second Most Recent (%)
Identify or locate the current owner of a particular work which you or a client were considering purchasing or licensing	39.1	31.0
Determine whether a particular work was still protected by copyright	55.7	40.9
Determine whether copyright rights in a particular work had been transferred	37.5	36.4
Determine whether a work similar or identical to another work had already been registered	15.9	12.2
Determine whether additional correspondence related to the original copyright certificate might be maintained by the U.S. Copyright Office	6.8	11.4
Check to see if a work had been correctly registered	22.7	19.3
See what else a particular author or creator had produced	10.2	8.0
Determine the date of a work's publication	30.7	20.5
Determine the date of a work's registration	23.9	20.5
Find out if the author or creator was the owner	27.4	27.4
Find out if the owner was the author or creator	22.7	19.3
Locate a group of works which might be available for purchase or licensing	4.6	6.8
Determine whether a work with the same or similar title had ever been registered	18.2	14.8
Other	5.8	5.8

SOURCE: King Research Inc., Survey of Copyright Attorneys and Industry Executives (n = 233)

firm 30 percent of the time. Also, one's own or employer's files were used 36 percent of the time and the author, artist or owner 18 percent were the sources used of the time and other sources five percent of the time.

In about 37 percent of the uses, there were other kinds of information which were also needed but were not available from the Coypright Office records which were consulted. The kind of needed information which could not be obtained from the Copyright Office records and the proportion of incidences in which the information was needed is given in Table 19.

Most needed information involved personal data about such things as current address of author or owner (55%), death dates (29%), heirs (29%), names of individuals or organizations involved in creation of the work which were not available from the registration information (29%) and identity or address of a business agent or retailer (26%). Details concerning the physical characteristics of the work also were mentioned by 26 percent of those who could not get needed information from the records.

A majority of those who needed additional information (94%) indicated that they looked for it from other sources such as the owner (57%), creator (50%), a business or legal representative of the creator or owner (48%), a library (39%), and other sources such as an industry directory, trade association or computerized database. A substantial number of hours was spent in looking for and obtaining the information most recently used from the Copyright Office records and other sources. (For example, senior lawyers or other executive personnel spent an average of 5.5 hours and other personnel spent an average of 1.1 hours.) About 20 percent of this time was spent looking for and obtaining information from Copyright Office records.

An indication of the value of the Copyright Office record is whether the information on the records would have still been used and how much more it would have cost to get the information. Over 75 percent of the respondents indicated that they would have consulted other sources to obtain the same or equivalent information if Copyright Office records had not been available. Of these, 80 percent indicated it would have taken more than the 5.5 senior hours and 1.1 other personnel hours to get the information and that the amount of time would have been increased an average

TABLE 19

PROPORTION OF RESPONSES IN WHICH NEEDED INFORMATION IS NOT AVAILABLE FROM COPYRIGHT OFFICE RECORDS: 1984/85

Needed Information	Proportion of Responses (%)
Current address of author or owner	54.8
Identity or address of a business agent or retailer	25.8
Pricing information	16.1
Details concerning the physical characteristics of the work	25.8
A description of the story line or plot	12.9
Names of other individuals or organizations involved in creation of the work which were not available from the registration information	29.0
How similar (or different from) another work the work in question was	22.6
Death dates	29.0
Heirs	29.0
Production of performance information	9.7

SOURCE: King Research Inc., Survey of Copyright Attorneys and Industry Executives (n = 233)

of about 50 percent. The other sources that would have been consulted include the owner (76%), the creator (69%), a business or legal directory (26%), a trade association (24%), court records (19%) and a computerized database (13%). It seems clear that the Copyright Office record is a valuable resource of copyright information.

Value and Cost of Copyright Registration

One indicator of the value of information is what people are willing to pay for it. We do not know what those who use Copyright registration certificates or other Copyright Office records are willing to pay for them, but we do know what they actually pay in terms of dollar charges and in the time of staff. These costs (or prices paid) are given below for times in which the copyright registration certificates or other records are used for litigation and for non-litigation purposes. A number of sources are used when obtaining information for litigation purposes. The proportions of times various sources used are summarized in Table 20 below. The most frequent sources used for this information are from one's own or employer's files and directly from the U.S. Copyright Office.

TABLE 20

PROPORTION OF LITIGATION CASES IN WHICH VARIOUS SOURCES OF COPYRIGHT CERTIFICATES OR OTHER COPYRIGHT OFFICE RECORDS ARE USED AND BY TYPE OF INDUSTRY: 1984/85

Source of Information	Proportion of Cases: Motion Picture (%)	Proportion of Cases: Textile (%)
Own or employer's files	68	51
Directly from the U.S. Copyright Office	47	32
From the U.S. Copyright Office via another law firm	8	22
From the author, artist, or owner	7	22

SOURCE: King Research Inc., Survey of Copyright Attorneys and Industry Executives (n = 233)

The total amount of time spent looking for or obtaining copyright certificates or other records is:

- Motion picture industry — 1,700 hours of senior time; 330 hours of other time.
- Textile Industry -- 65 hours of senior time; 230 hours of other time.

In addition, about $85,000 was paid to some other organization or person in the motion picture industry to obtain the Copyright certificate or other record. The corresponding amount spent in the textile industry was about $3,000. The amount of labor hours spent getting copyright certificates or other materials for non-litigation purposes is estimated to be 25,000 hours time of senior staff and 5,000 hours time of others.

Cost and Benefit of Copyright Formalities

In Section 4 we described copyright formalities and cited three principal advantages or positive effects of them:

- initiation of infringement proceedings,
- accessibility to prima facie evidence, and
- a mechanism for collecting statutory damages

In order to accomplish these and other effects, the U.S. Copyright Office and the copyright community must perform certain processes which require input costs necessary to achieve certain output quantities. In Table 21 we summarize the input costs, output quantities and effects of copyright processes (registration, recordation, monitoring, disputes and lawsuits) given from the perspective of creators or owners of the works. Similar results are presented later from the perspective of the U.S. Copyright Office.

The motion picture and textile industries expend an extimated $16.7 million (in 1984/85) to register and deposit an estimated 15,820 works and record transfer of 6,650 works. In a sense, this "price" they pay is a value placed by these industries on the copyright formalitites. As an average, the price is nearly $900 per work registered and deposited. The creators or the owners of the works expend this price in order to achieve certain effects such as:

TABLE 21

INPUT COST, OUTPUT QUANTITIES AND EFFECTS OF COPYRIGHT REGISTRATION (AND DEPOSIT) RECORDATION, MONITORING, DISPUTES AND LAWSUITS INVOLVING MOTION PICTURE AND FABRIC DESIGN WORKS FROM THE PERSPECTIVE OF COPYRIGHT CREATORS AND OWNERS OR THEIR REPRESENTATIVES: 1984/85

Process	Input/Output Effects	Motion Picture	Fabric Design
	Input		
Registration and Deposit	Cost	$11.2 million*	$2.5 million*
Recordation	Cost	2.9 million	0.1 million
Monitoring	Cost	1.1 million	0.2 million
Disputes	Cost	1.7 million	0.9 million
Lawsuits	Cost	5.0 million	1.4 million
Total		$21.9 million	5.1 million
	Output		
Registration and Deposit	Works registered	6,330	9,490
Recordation	Transfers	2,980	320
Monitoring	Potential Infringements Detected	4,300	375
Disputes	Disputes Resolved	2,093	184
Lawsuits	Lawsuits	747	153
	Effects		
Registration and Deposit	Avoidance of infringements, prerequisite for lawsuits, timeliness of redress, places burden on defendent		
Recordation	Ability to establish and identify ownership		
Monitoring	Reduction in infringements		
Disputes	Settlement of disputes	$9.8 million	$340,000
Lawsuits	Settlement of difficult cases	$11.5 million	$3.1 million

SOURCE: King Research, Inc., Survey of Copyright Attorneys and Industry Executives (n = 233)

*Includes registration fee

- avoiding infringements,
- establishing prerequisite for lawsuits (should disputes come to that),
- improving timeliness of redress from infringement, and
- placing the burden on defendents of disproving validity of ownership or facts given in the certificate.

Thus, the price paid is somewhat akin to the price people pay for security devices in their home and insurance for stolen property. The security measures being infringement prevention through copyright notice, registration (and deposit and recordation) and monitoring and insurance being damages collected through settlements through infringement disputes and lawsuits. It is interesting to note that the total cost to creators or owners of this protection and insurance is estimated to be about $22.6 million and the total amount of damages and fees recovered through infringement disputes and lawsuits is estimated to be about $24.7 million, a very similar amount.

The study did not determine the extent of infringement avoidance attributable to copyright formalitites. In fact, one might conclude that discovery of 4,300 potential infringements involving motion pictures (when only about 6,330 registered works plus older works are involved) suggests that there is little avoidance of infringements. On the other hand, there was only an estimated 375 potential infringements identified in the textile industry even through that industry spent about twice as much per potential infringement as in the motion picture industry ($260 versus $530 per potential infringement). It may be that the nature of the two industries are substantially different. Even though there appear to be fewer motion picture works registered, there are far more disputes and lawsuits involved and a great deal more expenditures involved in total. Thus, the ability to identify and fight potential infringements and the stakes involved may be greater in the motion picture industry. (This may also mean that the 4,300 potential infringements identified in the motion picture industry could only be the "tip of the iceberg".) However, the average cost per infringement dispute and lawsuit is higher in the textile industry $4,900 and $9,200 versus $810 and $6,700 respectively, which may mean that once a potential infringement is identified, the stakes may be high, but ability to prove infringement may be more difficult than with motion pictures.

As shown earlier in this section, survey results suggest that copyright formalities are highly instrumental in settling both disputes and lawsuits:

- registration is estimated to be very or somewhat important in resolving 76 percent of disputes and 80 percent of lawsuits;
- a substantial proportion of survey respondents indicated that copyright notice (52%), registration (66%), deposit (25%) and recordation (23%) were important to their most important lawsuit;
- prima facie evidence contained in the registration certificate was found to be very or somewhat important in helping settle or terminate litigation in 76 percent of the lawsuits; and
- when prima facie evidence was challenged, the challenge was unsuccessful 83 percent of the time.

A decision to carry forth an infringement dispute and lawsuit must balance the cost (i.e., actual cost and risk of damages in favor of the defendent) against the likelihood of favorable outcomes such as an agreement to terminate infringement activities and recovery of fees, compensation or statutory damages. Evidently, on the average, plaintiffs' decisions are valid because the costs of disputes and lawsuits of, perhaps, $4.4 million result in settlements of about $24.7 million (a factor of 5.6 to 1). In addition, they gain the value of protection of the motion pictures and fabric designs. The question, unanswered by the survey, is why defendents are willing to incur such costs as $4.4 million when their direct settlements are much smaller. The investment and potential value of works that are in dispute must be substantial.

When viewed from the U.S. Copyright Office's perspective (see Table 22), input costs substantially exceed revenue (i.e., first order effects). However, higher order effects to the copyright community are orders of magnitude greater than the input costs. Not only is the registration information extensively used in infringement disputes and lawsuits, the deposits have other higher order effects as well, as shown above. The value to the copyright community far exceeds the cost to the Copyright Office. Furthermore, 85 percent of the law firms and other companies and organizations concerned with motion pictures and fabric designs have used Copyright Office records in litigation for helping prove that the work is

TABLE 22

INPUT COST, OUTPUT QUANTITIES AND EFFECTS OF COPYRIGHT REGISTRATION (AND DEPOSIT) AND RECORDATION INVOLVING MOTION PICTURE AND FABRIC DESIGN WORKS FROM THE PERSPECTIVE OF THE U.S. COPYRIGHT OFFICE: 1984/85

Process	Input/Output Effects	Motion Picture	Fabric Design
	Input		
Registration and Deposit	Cost	$180,000	$270,000
Recordation	Cost	50,000	5,000
	Output		
Registration and Deposit	Works registered*	6,330	9,490
Recordation	Transfers*	2,980	320
	Effects		
Registration and Deposit	Revenue	$63,000	$95,000
	Benefits to Copyright Community and the Nation		

SOURCE: King Research, Inc., Survey of Copyright Attorneys and Industry Executives (n = 233)

*Survey estimates of number of works registered and of number of transfers registered (81%), date of registration (54%) and so on. In addition, over 40 percent had read or otherwise used the information for non-litigation purposes. The cost savings and time saving to the copyright community by having such information available is also substantial. Finally, in the literary area the savings to U.S. libraries by having bibliographic records available is in the hundreds of millions of dollars each year.

The study results appear to demonstrate the relationships among input costs, output quantities and positive effects of copyright formalities. What the study does not show, is the favorable (benefits) and unfavorable (costs) consequences of not having the copyright formalities. It was hoped that comparison of the U.S. copyright situation with that of other countries would reveal such consequences. However, it was found that, even though laws dealing with these formalities vary greatly among countries, the functions are nevertheless performed in one way or another. In general it is concluded that, in comparison, the U.S. copyright system works very well indeed and that the benefits of copyright formalitites are likely to far exceed their costs.

Opinions of Respondents

The end of the survey questionnaire deals with personal experience and opinions of the respondents. The following results apply to these questions. Concerning the amount of personal experience of the respondents in conducting copyright related matters in the foreign country where the most copyright experience was gained, the following results were obtained:

Amount of Experience	Proportion of Respondents (%)
None	14
Slight	48
Moderate	24
Extensive	14

Respondents were asked to compare certain aspects of conducting copyright business and copyright litigation in the United States with conducting similar matters in the foreign country with which they have the most experience. The results of these two opinion aspects of the survey are displayed in Table 23, where aspects of conducting copyright business are identified, and Table 24, where aspects of conducting copyright litigation are shown. In every aspect of conducting business and litigation, the U.S. system is favored over the foreign system.

A closely related but more global question appearing on the survey questionnaire was this: "As between the United States system and the foreign system with which you are most familiar, which would you prefer to have in force in the United States?" Ninety percent of the respondents favored the current U.S. system, while ten percent favored the foreign system. Furthermore, respondents were also asked to rank the following criteria that contributed to their choice for the preferred system: cost, uniformity of records, reliability of records, litigation considerations, other. Table 25 below gives average rankings (1-4) of factors which contribute to choices of preferred systems. Reliability of records, on the average, was the most highly ranked factor, followed by uniformity of records and litigation considerations. The lowest ranking factor is cost. Note that these rankings reflect the opinions of attorneys and industry executives. Possibly creators of works would have a different ranking.

Opinions of respondents were also solicited concerning how they believed U.S. copyright formalities should be funded. Table 26 reveals that most respondents (51 percent) favor building national library collections by a deposit requirement, while 11 percent favor taxation, and 38 percent favor a combination of taxation and a legal deposit requirement.

Table 27 shows that 47 percent of the respondents favor funding a national system containing copyright title information by fees from users of the system, while 47 percent favor funding by means of a combination of user fees and taxation; only 6 percent favor funding purely by taxation.

TABLE 23

OPINIONS OF RESPONDENTS CONCERNING THE RELATIVE PERFORMANCE OF U.S. AND FOREIGN COPYRIGHT SYSTEMS FOR CONDUCTING COPYRIGHT BUSINESS: 1984/85

	Proportions of Respondents With These Opinions		
Aspect of Conducting Copyright Business	U.S. Superior (%)	No Substantial Difference (%)	U.S. Inferior (%)
Ease of Determining Ownership of Copyright	63	32	5
Usefulness/reliability of registration system	63	28	9
Cost of Using Registration System	57	27	16
Usefulness/Relability of Recordation System	64	31	5

SOURCE: King Research, Inc., Survey of Copyright Attorneys and Industry Executives (n = 233)

a. The responses "Not Applicable", "Don't Know/No Opinion" were excluded from the proportions

TABLE 24

OPINIONS OF RESPONDENTS CONCERNING THE RELATIVE PERFORMANCE OF U.S. AND FOREIGN COPYRIGHT SYSTEMS FOR CONDUCTING COPYRIGHT LITIGATION: 1984/85

	Proportions[a] of Respondents With These Opinions		
Aspect of Conducting Copyright Business	U.S. Superior (%)	No Substantial Difference (%)	U.S. Inferior (%)
Minimum administrative burden on access to court	69	19	12
Proof of creation easy in court	41	48	11
Proof of ownership easy in court	55	31	14
Defense against claims facilitated by record of registration or ownership	64	20	16

SOURCE: King Research, Inc., Survey of Copyright Attorneys and Industry Executives (n = 233)

a. The responses "Not Applicable", "Don't Know/No Opinion" were excluded from the percentage

TABLE 25

AVERAGE RANKINGS OF FACTORS CONTRIBUTING TO CHOICE OF PREFERRED SYSTEM: 1984/85

Factor[a]	Average Rank
Reliability of records	1.67
Uniformity of records	2.37
Litigation considerations	2.60
Cost	3.02

SOURCE: King Research, Inc., Survey of Copyright Attorneys and Industry Executives (n = 233)

[a] Approximately 10 percent of the respondents included "other" factors; these factors, as a group, had an average rank of 2.27.

TABLE 26

OPINIONS OF RESPONDENTS CONCERNING WHETHER NATIONAL LIBRARIES SHOULD BE BUILT BY A LEGAL DEPOSIT REQUIREMENT, BY TAXATION, OR BY BOTH: 1984/85

Method of Supporting	Proportion of Respondents (%)
Legal deposit requirement	51
Taxation	11
Both	38

SOURCE: King Research, Inc., Survey of Copyright Attorneys and Industry Executives (n = 233)

TABLE 27

OPINIONS OF RESPONDENTS CONCERNING WHETHER SYSTEMS CONTAINING COPYRIGHT TITLE INFORMATION SHOULD BE FUNDED BY FEES FROM USERS, BY TAXATION, OR BY BOTH: 1984/85

Method of Funding	Proportion of Respondents (%)
By fees from users of the System	47
By taxation	6
By both	47

SOURCE: King Research, Inc., Survey of Copyright Attorneys and Industry Executives (n = 233)

APPENDIX A

QUESTIONNAIRE: SURVEY OF COPYRIGHT ATTORNEYS AND INDUSTRY EXECUTIVES

SURVEY OF COPYRIGHT ATTORNEYS AND INDUSTRY EXECUTIVES

GENERAL INSTRUCTIONS

YOUR IDENTITY AND ANSWERS WILL BE KEPT STRICTLY CONFIDENTIAL. DATA WILL BE REPORTED ONLY IN AGGREGATED FORM.

FOR ANY QUESTION THROUGHOUT THE QUESTIONNAIRE WHICH YOU DO NOT KNOW THE ANSWER, PLEASE WRITE IN "DK" FOR "DON'T KNOW."

Because your answers are extremely important to the accuracy of our study, please return the questionnaire even if you are unable to answer all the questions.

This questionnaire is being sent to individuals employed by industry *and* attorneys in law firms.

IF YOU ARE EMPLOYED BY INDUSTRY: (e.g., motion pictures, textiles, publishing, etc.):

For certain questions, it may be helpful to consult another staff member, your legal department, or your outside legal counsel. When "you" is used in a question, it refers to you as representing your entire company.

IF YOU ARE AN ATTORNEY IN A LAW FIRM:

For certain questions it may be helpful to consult another attorney or staff member in your law firm at your immediate location. When "you" is used in a question, it refers to *you personally*, rather than the law firm.

A self-addressed envelope is provided for your convenience. Please return within two weeks if possible. If you have any questions, please contact Ms. Mary Yates at (301) 881-6766.

SECTION A
PROFESSIONAL, EDUCATIONAL AND EMPLOYMENT BACKGROUND

A1. Please estimate below the percent of your personal professional working time devoted to *copyright law-related activities* (e.g., business transactions, litigation, involvement in copyright registration, or other copyright formalities). Also estimate the percent of time devoted to other areas of intellectual property law (e.g., patents, trademarks, or trade secrets). (PLEASE INSERT PERCENTS IN SPACES PROVIDED, USING ZERO (0) FOR NONE. PLEASE MAKE SURE PERCENTS TOTAL TO 100%.)

a) Percent of professional working time devoted to *copyright matters* . . . . ____________%

b) Percent of professional working time devoted to *other areas of intellectual property law*, e.g., patents, trademarks, trade secrets . . . . ____________%

c) Percent of professional working time *not* devoted to (a) or (b) . . . . ____________%

TOTAL (a + b + c) 100%

A4. Approximately how many employees are in your organization?

Number of senior lawyers, executives or equivalent employees .... ______

Number of other employees .... ______

A5. Approximately how many attorneys in your company or law firm have conducted copyright-related matters during the past 12 months? (CIRCLE APPROPRIATE CODE NUMBER.)

0 1

1 2

2 - 3 3

4 - 5 4

6 - 10 5

11 or more 6

A6. During the past 12 months has your company or law firm consulted outside legal counsel to assist with copyright-related matters? (CIRCLE 1 OR 2.)

Yes 1

No 2

A7. Are you an attorney (CIRCLE 1 OR 2.)

Yes 1

No 2

SECTION B
COPYRIGHT DISPUTES

B1. Does your company or law firm expend any effort in monitoring infringements against your or your clients' products? (CIRCLE 1 OR 2.)

Yes 1

No .... 2 **SKIP TO #B3**

B2. During the past year, how many hours were spent by your company or law firm in monitoring the marketplace for potential copyright-related infringements? (INSERT ESTIMATE IN SPACE PROVIDED, USING ZERO (0) FOR NONE.)

Estimated hours spent by organization .... ______ Hours

B3. Are you aware of any information which estimates the number of *undetected* infringements? (CIRCLE 1 OR 2.)

Yes 1

No .... 2 **SKIP TO #B5**

B4. Please identify sources of this information in space provided.

Sources of information ______________________________

____

B10. **During the past 12 months, approximately how many copyright-related disputes and/or lawsuits did your company or law firm resolve/terminate? (INSERT NUMBER IN SPACE, USING ZERO (0) FOR NONE. "*DISPUTE*" IS DEFINED AS A DISAGREEMENT WHICH IS RESOLVED/TERMINATED WITHOUT FILING A LAWSUIT. "*LAWSUIT*" HERE MEANS ANY JUDICIAL PROCESSING IN WHICH INITIAL PLEADINGS ARE FILED AND PROCESS IS SERVED, WHETHER OR NOT THE CASE EVENTUALLY REACHED THE TRIAL STAGE.)**

Approximate number of copyright-related disputes and/or lawsuits resolved/terminated:	Disputes	Lawsuits
As the (potential) plaintiff (e.g., as an employee of the plaintiff)	______	______
On behalf of the (potential) plaintiff (e.g., as outside legal counsel for the plaintiff)	______	______
As the (potential) defendant (e.g., as an employee of the defendant)	______	______
On behalf of the (potential) defendant (e.g., as outside legal counsel for the defendant)	______	______

NOTE: IF ALL EIGHT ENTRIES ARE ZERO, PLEASE SKIP TO SECTION C.

B11. During the past 12 months, approximately how many hours were spent by your company or law firm in dealing with all disputes and/or lawsuits? (INSERT NUMBER IN SPACE PROVIDED, USING ZERO (0) FOR NONE.)

	Disputes	Lawsuits
Number of senior lawyer, executive or equivalent hours	_____Hours	_____Hours
Number of other personnel hours	_____Hours	_____Hours

NOTE: QUESTIONS B12 THROUGH B17 REFER TO *BOTH* YOUR *LAST* DISPUTE AND LAWSUIT IN WHICH YOU WERE INVOLVED DURING THE PAST 12 MONTHS. IF YOU HAVE NOT BEEN INVOLVED IN A DISPUTE OR LAWSUIT, PLEASE SKIP TO QUESTION B18.

B12. Thinking back to ***both*** your ***last dispute*** resolved/terminated *without* filing suit, and the ***last*** **copyright-related *lawsuit*** in which you were involved, please indicate whether you were involved as or on behalf of the potential plaintiff or defendant. (CIRCLE APPROPRIATE CODE NUMBERS.)

Involved:	Dispute	Lawsuit
a) As or on behalf of potential defendant	1	1
b) As or on behalf of potential plaintiff	2	2

B13. For *both* the most recent dispute *and* lawsuit, please indicate which of the following outcomes were achieved. (CIRCLE APPROPRIATE CODE NUMBERS. FOR CODES 2, 3, 4, AND 5 ALSO PLEASE INSERT APPROXIMATE DOLLAR AMOUNT IN SPACE PROVIDED.)

DISPUTE OUTCOME

		Potential Plaintiff		Potential Defendant
Agreement to terminate infringement activity	1	N/A		N/A
Monetary compensation	2	$______	2	$______
Legal fees/expenses	3	$______	3	$______
Other (specify)____				
____ . . .	4	$______	4	$______

NOTE: PLEASE REFER TO YOUR ANSWERS TO B10. IF ALL FOUR "*LAWSUIT*" ANSWERS TO QUESTION B10 ARE ZERO, PLEASE SKIP TO SECTION C. OTHERWISE, PLEASE CONTINUE WITH QUESTION B18.

B18. Of the copyright-related *lawsuits* identified in #B10 above, please indicate how many were settled/terminated prior to trial, settled/terminated during trial, and how many were tried to judgement. (INSERT NUMBERS IN SPACES PROVIDED, USING ZERO (0) FOR NONE.)

a) Number of lawsuits settled/terminated prior to trial . . . . ________

b) Number of lawsuits settled/terminated during trial . . . . ________

c) Number of lawsuits tried to judgement . . . . ________

B19. Thinking back to *your last* copyright-related *lawsuit* which was settled/terminated, please indicate how it was resolved? (CIRCLE 1, 2, OR 3.)

Have not been involved in such a lawsuit	1
Settled/terminated prior to trial	2
Settled/terminated during trial	3
Tried to judgement	4

B20. Of the Question B10 lawsuits, in how many of them was the *prima facie* evidence contained in the registration certificate important in helping settle/terminate the litigation? (INSERT ESTIMATES IN SPACES PROVIDED.)

Number of lawsuits in which prima facie evidence was:

a) Very important . . . . ________

b) Somewhat important . . . . ________

c) Not important . . . . ________

B21. In approximately how many of the court cases mentioned in Question B10 was the *prima facie* evidence supplied by the registration certificate *challenged* by either party? (INSERT NUMBERS IN SPACES, USING ZERO (0) FOR NONE.)

a) Number of suits in which prima facie evidence supplied by the copyright registration was challenged, but the ***challenge was not successful*** . . . . ________

b) Number of suits in which prima facie evidence supplied by the copyright registration was challenged, and the ***challenge was successful*** . . . . ________

B23. Considering all the copyright-related *litigation* with which your organization has been involved over the past 12 months, has your organization actually *used* any Copyright Office records (***irrespective of their location***), e.g., copyright registration certificates, the Copyright Office card catalog, its correspondence files, etc. in connection with this litigation? (CIRCLE 1 OR 2.)

Yes 1

No .... 2 **SKIP TO SECTION C**

B24. Did your organization use Copyright Office records (***irrespective of their location***) to perform any of the possible litigation-related functions listed below? (FOR EACH FUNCTION, CIRCLE "1" FOR YES AND "2" FOR NO.)

	Has your organization actually been involved in litigation where Copyright Office records were used to help perform this function?	
Potential function of Copyright Office records *during litigation:*	Yes	No
a) Helping prove the date of a work's creation	1	2
b) Helping prove the date of ownership transfer for a previously-registered work	1	2
c) Helping prove the date of registration	1	2
d) Helping prove the identity of the owner who was the creator, or vice-versa	1	2
e) Helping prove the identity of the creator, who was *not* the owner, or vice-versa	1	2
f) Helping prove that the work was registered	1	2
g) Helping prove that the registration had been renewed	1	2
h) Helping prove the fact that irregularities existed — or did not exist — with the way that the work was registered	1	2
i) Using or referring to the registration certificate as a means of "warning" a known or suspected infringer, prior to actually filing a lawsuit	1	2
j) Other use(s) of copyright registration certificate(s) during litigation (DESCRIBE): ____________ ____________	1	N/A

B29. Did you or your organization submit a bill to or charge another person or organization for the time referred to above? (CIRCLE 1 OR 2).

Yes	1	
No	2	SKIP TO #B31

B30. Approximately how much was charged for these services?

Amount Billed:

$0 — 50	1
$51 — 100	2
$101 — 250	3
$251 or more	4
Don't Know	8

B31. Did you or your organization pay another person or organization for *its* services in obtaining a copy of this registration certificate or other Copyright Office records? (CIRCLE 1 OR 2).

Yes	1	
No	2	SKIP TO #B33

B32. Approximately how much did you or your organization pay this other person or organization for helping you to obtain a copy of this information? (CIRCLE APPROPRIATE CODE NUMBER.)

Amount Paid:

$0 — 50	1
$51 — 100	2
$101 — 250	3
251 or more	4
Don't Know	8

B33. Did using this copyright registration certificate or other Copyright Office record *save* you or your organization any time and/or money? (CIRCLE APPROPRIATE CODE NUMBER.)

	Yes	No
Saved time	1	2
Saved money	1	2

NOTE: IF YOU HAVE CIRCLED *BOTH* "2's," SKIP TO SECTION C

SECTION C
INVOLVEMENT IN COPYRIGHT REGISTRATION

C1. During the past 12 months, has your company or law firm been involved in the initial registration of claims to copyright in works authored, produced, or published *by your company* (or any of its subsidiaries) or *by someone else* (e.g., for a client)? (CIRCLE 1 OR 2.)

Yes	1	
No	2	SKIP TO SECTION D

C2. Of the total works authored, produced, or published by your company (or its subsidiaries), or your clients, during the past 12 months, approximately what percentage is covered by registration certificates? (CIRCLE 1, 2, 3, OR 4.)

Percent	
0—10	1
11—50	2
51—75	3
76—100	4

C3. During the past 12 months, approximately *how many* registrations of the following types has your company or law firm made with the U.S. Copyright Office with respect to works which were authored, produced, or published *by your company* (or its subsidiaries) or *by someone else* (e.g., your clients)? (INSERT ESTIMATED NUMBER OF REGISTRATIONS IN SPACES, USING ZERO (0) FOR NONE.)

Code Number	Type of Work	Number of Registants
1	Feature-length motion picture	________
2	Work associated with the creation or production of a feature-length motion picture (e.g., novel, screenplay, other work upon which the motion picture was based, etc.)	________
3	Work derived from a feature-length motion picture (e.g., novel, toy, clothing, still photograph, poster, television show or series, etc)	________
4	An artistic design intended to be printed on or knitted or woven into cloth or textile goods	________
5	A finished textile article (e.g., handkerchief, scarf, drapery, etc.) on which an artistic design appeared	________
6	A literary work (e.g., a magazine or magazine article, book, novel, etc.) not associated with any of the above	________
7	Other (DESCRIBE)________________	________
8	TOTAL	________

C11. Approximately how much were you or your organization paid for registering the work in #C4?

$0 — 50	1
$51 — 200	2
More than $200	3
Don't know	8

C12. As part of this registration, did you deposit with the Copyright Office complete copies of the work or identifying material (e.g., photographs)? (PLEASE CIRCLE "1" OR "2").

One or two complete copies of the work	1
Identifying material	2

If "1", what was the value (rounded to the nearest $10) of the deposit copy(ies)__________.

If "2", what was the *approximate* cost of preparing the identifying material? (Include staff time, photographic supplies consumed, etc., in estimating this figure to the nearest $10). __________

D5. What was the approximate *number of hours* devoted by you and/or your organization to recording the ownership transfer or other document of the work identified in Question D3 above? (INSERT ESTIMATE IN SPACES PROVIDED)

Number of senior lawyer, executive or equivalent hours spent preparing copyright recordation . ______Hours

Other personnel hours . . . . ______Hours

D6. Did you or your organization *pay* another person or organization to assist you in performing this recordation of ownership transfer or other document with the U.S. Copyright Office? (CIRCLE 1 OR 2.)

Yes 1

No . . . . 2 SKIP TO #D8

D7. How much did you or your organization pay this other person or organization to help you in performing this recordation? (CIRCLE APPROPRIATE CODE NUMBER.)

Dollar amount paid to other person or organization to help in performing recordation:

$0 — 50 1

$51 — 200 2

More than $200 3

Don't know 8

D8. Were you or your organization *paid* by another person or organization for recording this copyright transfer or other document with the U.S. Copyright Office on their behalf? (CIRCLE 1 OR 2.)

Yes 1

No . . . . 2 SKIP TO SECTION E

D9. Approximately how much were you or your organization paid for your services? (CIRCLE APPROPRIATE CODE NUMBER.)

$0 — 50 1

$51 — 200 2

More than $200 3

Don't know 8

E4. Listed below are some of the possible reasons why Copyright Office records are used. Considering your or your organization's two *most recent* uses of Copyright Office records, please circle the appropriate numbers to indicate for each of the possible uses below whether it was relevant or not. (CIRCLE "1" FOR MOST RECENT USE/YES AND "2" FOR SECOND MOST RECENT USE/YES FOR EACH POTENTIAL USE OF COPYRIGHT OFFICE RECORDS.)

	Relevant?	
Potential Use of Copyright Office Records	Most Recent Yes	Second Most Recent Yes
a) Identify or locate the current owner of a particular work which you or a client were considering purchasing or licensing	1	2
b) Determine whether a particular work was still protected by copyright	1	2
c) Determine whether copyright rights in a particular work had been transferred	1	2
d) Determine whether a work similar or identical to another work had already been registered	1	2
e) Determine whether additional correspondence related to the original copyright certificate might be maintained by the U.S. Copyright Office	1	2
f) Check to see if a work had been correctly registered	1	2
g) See what else a particular author or creator had produced	1	2
h) Determine the date of a work's publication	1	2
i) Determine the date of a work's registration	1	2
j) Find out if the author or creator was the owner	1	2
k) Find out if the owner was the author or creator	1	2
l) Locate a group of works which might be available for purchase or licensing	1	2
m) Determine whether a work with the same or similar title had ever been registered	1	2
n) Other use(s) (DESCRIBE): ____________________	1	2

E8. What was the other information which you could *not* obtain from the Copyright Office records? (CIRCLE 1 OR 2 FOR EACH TYPE OF RELEVANT INFORMATION.)

Other needed information not available from Copyright Office records	Yes	No
a) Current address of author or owner	1	2
b) Identity or address of a business agent or retailer	1	2
c) Pricing information	1	2
d) Details concerning the physical characteristics of the work	1	2
e) A description of the story line or plot	1	2
f) Names of other individuals or organizations involved in creation of the work which were not available from the registration information	1	2
g) How similar to (or different from) another work the work in question was	1	2
h) Death dates	1	2
i) Heirs	1	2
j) Production or performance information	1	2
k) Other (DESCRIBE): ______	1	2

E9. Did you *attempt* to obtain this other information from other sources? (CIRCLE 1 OR 2.)

Yes	1
No	2 SKIP TO #E13

E10. What other sources of information did you contact? (CIRCLE 1 OR 2 FOR EACH INFORMATION SOURCE.)

Other sources of information?	Yes	No
a) The creator	1	2
b) The owner (not the creator)	1	2
c) A trade association	1	2
d) An industry directory	1	2
e) A business or legal representative of the creator or owner	1	2
f) Court records	1	2
g) A computerized database	1	2
h) A library	1	2
i) Other(s) (DESCRIBE): ______	1	2

SECTION F
FOREIGN COPYRIGHT EXPERIENCE

F1. Have you, your company or law firm done copyright business or been involved in a copyright dispute outside the United States in the last 5 years? *"Copyright business"* includes but is not limited to seeking, obtaining, or granting licenses or other transfers of rights; *"copyright dispute"* involves being or representing a party in a copyright controversy (whether or not a lawsuit was filed). (CIRCLE 1 OR 2).

Yes	1	
No	2	SKIP TO #F9

F2. In what countries has your company or law firm done copyright business or been involved in a copyright dispute in the last 5 years? (PLEASE CIRCLE ALL APPROPRIATE CODE NUMBERS.)

Country:	Code Number
Canada	1
Mexico	2
United Kingdom	3
France	4
W. Germany	5
Sweden	6
Australia	7
Japan	8
Other European (specify)__________	9
Other Asian (specify)__________	10
Latin American (Other than Mexico) (specify)__________	11
African (specify)__________	12

F3. Within the same 5-year period, in any country, were you or your organization ever compelled (by law or universal business practice) or did you or your organization ever elect to use that country's registration, recordation, or deposit system (whether public or private) with respect to any type of copyright or design business? (PLEASE CIRCLE 1, 2, OR 3).

Yes, compelled	1	
Yes, elected	2	
No	3	SKIP TO #F5

F14. Please rank those criteria which contributed to your answer to #F13. (RANK THE *MOST* IMPORTANT AS "1", NEXT AS "2," ETC.)

______Cost

______Uniformity of Records

______Reliability of Records

______Litigation Considerations

______Other (Describe)______________________________

____

____

____

____

REMEMBER THAT YOUR IDENTITY AND ANSWERS WILL BE KEPT STRICTLY CONFIDENTIAL. ANSWERS WILL BE REPORTED ONLY IN AGGREGATED FORM. FOR PURPOSE OF POSSIBLE PHONE FOLLOW-UP, PLEASE PROVIDE YOUR NAME, TITLE, NAME OF FIRM AND TELEPHONE NUMBER.

F15. Name: ______________________________

F16. Your title: ______________________________

F17. Name of firm: ______________________________

F18. Telephone number: ______________________________

F19. Thank you. Please return this questionnaire with any extra comments your may wish to make to:

King Research, Inc., P.O. Box 4709, Rockville, Maryland 20850

THANK YOU VERY MUCH
AND
HAPPY HOLIDAYS!

APPENDIX B

INDIVIDUALS INTERVIEWED IN ENGLAND, FRANCE AND SWEDEN

APPENDIX B

LIST OF INDIVIDUALS INTERVIEWED IN ENGLAND, FRANCE AND SWEDEN

ENGLAND

J.M. Aubrey
Courtalds, Ltd
P.O. Box 16
Foleshill Road
Coventry CV6 5AE
England [T]

Oscar Beuselinck
Wright & Webb
Syrett & Sons
10 Soho Square
England

Professor W.R. Cornish
London School of Economics
& Political Science
Houghton Street
England [C]

Ms. Gillian Davies
Assistant Director-General
International Federation of
Producers of Phonograms
& Videograms
123 Pall Mall
England

David Hill
Department of Trade
Films Branch
2816 Millbank Tower
Millbank
London [MP]

Mr. W. Howarth, Design Agent
United Africa Company
U.A.C. House
Blackfriars Road
England

Ken L. Maidment, President
British Film & Television Producers
Association, Ltd.
Paramount House
162-170 Wardour Street
England [MP]

Roger Phillpot
Department of Industry
Room 612, Ashdown House
123 Victoria Street
England

R.J. Watson, Designs Registry
State House - Room 328A
High Holborn
England

FRANCE

M. Gabriel Armand
Goldsmith, Delvolve & Associates
Societe d' Advocats
4 Avenue Van Dyck
75008 Paris [T]

Ms. Gerald Bigle
Centre International du
Droit de l'Audiovisuel
75 Boulevard Malesherbes
75008 Paris [MP]

Emil Le Bris
Syndicat ds Auteurs et Compositeurs
80, rue Taitbout
75441 Paris [C]

Michel Nony
Conseil en Brevets D'Invention
29, Rue Cambaceres
75008 Paris

M. Jacques Bodels
Goldsmith, Delvolve & Associates
Societe d'Advocats
4 AVenue Van Dyck
75008 Paris [T]

Thierry Desurmont
Avocat a la Cour
Docteur en Droit
10, Boulevard Suchet
76016 Paris [MP]

M. Jacques Dragne, Director
Institut Natinal de la
Propriete Industrielle
26 bis rue de Leningrad
75800 Paris [T]

M. Wladimir Duchemin
Directeur General
Societe pour la Protection
des Dessins et Modeles
12, rue Henner
75009 Paris [T]

M. Lazare
Confederation des Travailleurs
intellectuel
1, Rue de Courcelles
75008 Paris [C]

J.A. Phillippe
Centre National de la
Cinematographie
11, rue Galilee
75116 Paris [MP]

M. Pinscon
Association de Recherche Economique
en Propriete Intellectuelle
et Transferts Techniques
75008 Paris [T]

Monsieur Rogard
Secretaire General
Chambre Syndicale ds Producteurs
de films Francais
5, rue du Cirque
75008 Paris [MP]

Mr. Rene Thevenet
Association Francaise des
Producteurs de Films et de
Programmes Audiovisuels
50, Avenue Marceau
75008 Paris

M. Gerard Valter
Chef du Departement juridique
Centre Natinale de la
Cinematographie
12, rue due Lubeck
75784 Paris [MP]

SWEDEN

Klas Holming, Director
Federation of Swedish Theaters/
Teatrarnas Riksforbund
Box 1720
s-111 87 Stockholm [MP]

Lars Holmquist
Patentbyra AB
P.O. Box 4289
S-203 14 Malmo 4
Sweden [T]

Rolf Larsson
Berglunds Advokatbyra
Box 1330
111 83 Stockholm

A. Henry Olsson, Legal Adviser
Ministry of Justice
Division for International Affairs
Rosenbad 4
S-103 33 Stockholm

Ulf Payron, Legal Adviser
Swedish Television Corporation
S-105 10 Stockholm [MP]

Stig Thorson
Textil radet
Blasieholmsgaten 5
103 23 Stockholm

M. Jacques Bodels
Goldsmith, Delvolve & Associates
Societe d'Advocats
4 AVenue Van Dyck
75008 Paris [T]

Thierry Desurmont
Avocat a la Cour
Docteur en Droit
10, Boulevard Suchet
76016 Paris [MP]

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75800 Paris [T]

M. Wladimir Duchemin
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Societe pour la Protection
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75008 Paris [C]

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11, rue Galilee
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SWEDEN

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S-103 33 Stockholm

Ulf Payron, Legal Adviser
Swedish Television Corporation
S-105 10 Stockholm [MP]

Stig Thorson
Textil radet
Blasieholmsgaten 5
103 23 Stockholm

APPENDIX B (continued)

Mats Mullem (Attorney)
Adolf Ohmans Advokatbyra AB
Box 1703, S-111 87 Stockholm [MP]102

Claes Uggla and Vera Smith
Patent - OCH Registreringsverket
42 Stockholm [T]

APPENDIX C

QUESTIONS ASKED ABOUT EUROPEAN INTELLECTUAL PROPERTY SYSTEMS

APPENDIX C

EXAMPLES OF QUESTIONS ASKED ABOUT EUROPEAN INTELLECTUAL PROPERTY SYSTEMS IN THE U.S. COPYRIGHT OFFICES'S COST-BENEFIT STUDY OF COPYRIGHT FORMALITIES

King Research, Inc.

NOTE: In this pilot study for the U.S. Copyright Office, we are comparing the U.S. system of "copyright formalities" with the "formality-free" systems of England, France, and Sweden. The copyright formalities we are considering include registration, deposit, the use of the copyright notice, and the registration of transfers of ownership. The two industries we are considering as examples of the different uses of copyright formalities are the motion picture industry and the textile/fabric design industries.

1. Sometimes European copyright systems are referred to as "formality-free" systems since the exercise of the copyright in these countries is not dependent upon the performance of "formalities" such as registration or deposit. Still, some European systems may exist which are similar to copyright formalities. Possible examples of such systems are registration systems which are designed to support taxation or licensing. What registration systems exist in your country to support ownership or business transactions involving motion pictures or textile designs? Are such systems operated by the government or by other agencies? How are they funded? Are they connected with copyright in any way?

2. One frequently-cited benefit of the U.S. copyright registration system is that the U.S. Copyright Office's registration file provides a single location where the ownership of specific intellectual properties can be traced. If your country does not have a single registration system for identifying ownership of individual motion pictures or fabric designs, how do potential purchasers or licensees investigate the ownership of such works?

3. In the United States, attorneys can become involved at all stages of the copyright process, including (1) the initial registration of the work, (2) licensing or transfers of ownership, or (3) legal action in copyright infringement cases. As a result of this, U.S. attorneys also become involved in the use of copyright formalities. In your country, what is the role of the legal profession concerning copyright? Are there kinds of copyright questions or disputes which are ordinarily settled by government officials or magistrates without the use of your country's court system?

4. In the United States, visual designs or patterns which are printed on, or woven into, fabrics can be protected by the U.S. Copyright Law. The U.S. Copyright Office has developed appropriate registration and deposit systems for handling such designs. How is the protection of such designs handled in your country? If there is a registration or examination process which supports the protection of fabric designs, to whom should we speak to obtain details on how this system operates, how much it costs, and who uses it?

5. Does your country have a deposit system for motion pictures or fabric designs? Is the system voluntary or mandatory? Who operates the deposit system? Is it connected in any way with copyright, design protection, or patent laws?

6. In a U.S. court of law, the existence of a copyright registration certificate can serve as "prima facie" evidence of copyright ownership. One benefit attributed to this use of the registration certificate is that it makes it easier in court for an owner to prove ownership. In your country, what kinds of documentary evidence, if any, are used in court to prove ownership?

7. In your opinion, what are the particular cultural or historical characteristics of your country which account for the differences between your system and the U.S. system of copyright formalities?